

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 341

WILLIAM POULOS, APPELLANT,

vs.

THE STATE OF NEW HAMPSHIRE

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE

FILED SEPTEMBER 17, 1952

Jurisdiction postponed November 10, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 341

WILLIAM POULOS, APPELLANT,

vs.

THE STATE OF NEW HAMPSHIRE

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE

INDEX

	Original	Print
Proceedings in Supreme Court of the State of New Hampshire	1	1
Opinion, dated June 5, 1951 in Case No. 4042	1	1
Record from Superior Court of the State of New Hampshire, Rockingham	5	8
Respondents' bill of exceptions	5	9
Statement of case	6	9
Complaint	7	10
Order allowing bill of exceptions	11	14
Complaint against Robert W. Derrickson	11	14
Complaint against William Poulos	12	15
Transcript of testimony	12	15
Testimony of Americo J. Bellucci	13	16
Forrest E. Hodgdon, Jr.	17	20
William Poulos	19	22
Paul F. Connors	25	28
Herbert L. Whitehouse	26	29
Nat S. Stevens	26	29
Robert W. Derrickson	32	35
Thomas F. Mullen, Sr.	38	41

Record from Superior Court of the State of New Hampshire, Rockingham—Continued

Respondents' Bill of exceptions—Continued

Transcript of testimony—Continued

Testimony of—Continued:

	Original	Print
Frank E. Patterson	41	44
Lester R. Whitaker	45	48
Theodore R. Butler	47	50
John J. Leary	48	51
Richman S. Margeson	48	51
Americo J. Bellucci (Recalled)	51	54
Motion to dismiss	53	56
Stipulation re Derriekson's death	56	59
Opinion, as modified June 3, 1952, in Case No. 4113	60	61
Motion for rehearing	69	67
Docket entries	76	70
Clerk's certificate (omitted in printing)	77	
Petition for appeal, assignments of error and prayer for reversal	78	71
Order allowing appeal	81	73
Citation (omitted in printing)	83	
Cost bond (omitted in printing)	84	
Service of appeal papers under Rule 12 (omitted in printing)	85	
Praecept for transcript of record	89	75
Statement of points relied on	91	76
Designation of the parts of the record to be printed	95	77
Order postponing jurisdiction	99	78

[fol. 1]

IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

ROCKINGHAM

No. 4042

STATE

v.

ROBERT W. DERRICKSON

STATE

v.

WILLIAM POULOS

OPINION—June 5, 1951

Complaints, for conducting open air public meetings in Goodwin Park, which abuts Islington Street in the city of Portsmouth, on the afternoons of Sunday, June 25, 1950, and July 2, 1950, without a permit therefor contrary to the requirements of chapter 24, article 7 of the municipal ordinance of the city of Portsmouth. The ordinance is as follows:

“Section 22. License Required. No theatrical or dramatic representation shall be performed or exhibited and no parade or procession upon any public street or way, and no open air public meeting upon any ground abutting thereon shall be permitted unless a license therefor shall first be obtained from the City Council.

“Section 23. License Form. Every such license shall be in writing and shall specify the day and hour of the permit to perform or exhibit, or of such parade, procession or open air public meeting.

“Section 24. Fee. The fee for such license shall be not more than Three Hundred Dollars for each day such license shall perform or exhibit or such parade, procession, or open air public meeting shall take place, but the fee for a license to exhibit in any hall shall not exceed Fifty Dollars.

“Section 25. Penalty. Any person who violates section 22 of this Article shall be fined Twenty Dollars.”

Upon appeal *de novo* to the Superior Court from the municipal court of Portsmouth, the defendants before trial moved to dismiss the complaints on the ground that the ordinance as applied was unconstitutional and void. Pursuant to an agreed stipulation of the facts by the parties the question so raised was transferred without ruling by Goodnow, C. J.

The congregation of Jehovah's witnesses "acting through the defendants, Derrickson and Poulos, made application to the city council of the City of Portsmouth for a license to hold a public meeting in Goodwin Park. A written petition was duly addressed to the city council of Portsmouth and filed with the clerk. They were informed that they could appear and speak in behalf of the petition before the city council. The petition was placed on the agenda for hearing May 4, 1950. On that date the defendants appeared before the city council, the defendant Derrickson doing the speaking in behalf of the congregation of Jehovah's witnesses. The congregation offered to pay any reasonable fee customarily paid for the use of the park as well as any expenses incurred by the city in permitting the holding of the requested meeting. The defendants gave the names of the Bible talks to be delivered and the date, time and place of the proposed assemblies in the park in question."

After a full hearing before the city Council "the petition of the defendants was denied because the members of the council stated that they had never received a petition of a religious group to use the public parks and they were fearful of ~~causing~~ a disturbance if the application was granted and the assembly held." Thereafter the defendants on Sunday afternoon, June 25, and July 2, 1950, held their meetings without a license. The defendant Derrick- [fol. 2] son was not allowed to continue after speaking for forty-five minutes and the defendant Poulos was not allowed to continue after speaking about fifteen minutes. No disturbance resulted from the meetings.

Gordon M. Tiffany, Attorney General, Glenn Davis, Law Assistant, and Arthur J. Reinhart, City Solicitor (Mr. Tiffany and Mr. Reinhart orally), for the State.

Hayden C. Covington (of New York) and Henry M. Fuller (Mr. Covington orally), for the defendants.

KENISON, J.:

The Bill of Rights of the Constitution of New Hampshire does not guarantee to every individual or to every group of individuals absolute liberty. "When men enter into a state of society, they surrender up some of their natural rights to that society in order to ensure the protection of others; and, without such an equivalent, the surrender is void." N. H. Const., Part First Art. 3rd. The rights of freedom of assembly, speech and worship are accorded a high place in and are specifically guaranteed by the New Hampshire Constitution and statutes implementing it. While these freedoms cannot be prohibited, they may be subjected to reasonable and nondiscriminatory regulation in order that the constitutional rights of others may be equally protected in the interest of public order and convenience.

The ordinance drawn in question in this case is copied from the statute which was construed as valid in *State v. Cox*, 91 N. H. 137 and affirmed by a unanimous court in *Cox v. New Hampshire*, 312 U. S. 569. The construction placed on the statute in that case (R.L., c. 174, ss. 2, 4) is the construction that must be given to sections 22 and 24 of the ordinance. "The discretion thus vested in the authority [city council] is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate. The licensing authority has no delegation of power in excess of that which the legislature granting the power has and the legislature attempted to delegate no power it did not possess." *State v. Cox*, *supra*, 143.

The defendants dismiss the applicability of this case briefly in the following manner: "The *Cox* case is distinguishable here because in this case the respondents have attempted to comply with the ordinance and offered to pay the necessary fee and expenses." It is doubtful that

4
it makes any critical constitutional difference as to the validity of an ordinance or statute that there was no compliance in one case or attempted compliance in the other. However, we do not pause to examine this contention with any more detail than was advanced in its behalf since the defendants have chosen to place their chief reliance on the recent case of *Niemotko v. Maryland*, 340 U. S. 268, which will be hereinafter discussed.

We do not know the number of parks, public commons, public squares and other public grounds in the city of Portsmouth, although it is a matter of public knowledge that Goodwin Park is not the only one in the city (*Sherburne v. Portsmouth*, 72 N. H. 539) and that it is a small park. There is nothing to indicate that it has been used for [fol. 3] religious meetings or sectarian purposes since it was donated to and dedicated by the city more than a half century ago. See Portsmouth City Reports 1887, page 12; Annual Report City of Portsmouth 1888, page 13; Gurney, Portsmouth Historic and Picturesque 1902, page 64. It cannot be argued that this is a recent discrimination against Jehovah's witnesses since the denial of the park for religious and sectarian meetings is consistent with a definite and systematic policy which treats the Jew, the Catholic, the Protestant and the Jehovah's witness alike.

If the city of Portsmouth wishes to use one of its small parks for other public purposes and to prohibit its use for religious and sectarian meetings in a nondiscriminatory way, constitutional rights are not abridged if there are still adequate places of assembly for those who wish to hold public open air church meetings. If the right to hold a church meeting on public property is to be given a preferred position, it does not necessarily follow that that right can be exercised in every park at any time that a certain group desires to do so. The privilege of people to seek peace and sanctuary in a public park, the privilege to be let alone and the privilege not to be subject to oral aggression of a religious nature on Sunday are entitled to some consideration. If they are allowed to abridge or unreasonably impair the freedoms of free speech, assembly and worship they are unconstitutional. If such privileges are provided for in a systematic and nondiscriminatory way so that the freedoms of speech, assembly and worship

can be adequately exercised within a city the Constitution is no bar to their enforcement.

In the present case we have an ordinance which the defendants have conceded to be valid on its face. The ordinance has been construed by this court and the Supreme Court of the United States in such a way that no discriminatory or unfair abridgement is reasonably possible. This is not a case like *Niemotko* where there was an amorphous, indefinite and nonstatutory policy. In *Niemotko* the applicants were questioned by the city council in a way which clearly indicated prejudice, bias and the consideration of immaterial matters. Those factors are not present in this case. In *Niemotko* the city had previously permitted gatherings by religious groups which is not the case here. In *Niemotko* it was evident there was a previous restraint under an indefinite licensing system which in effect regulated the use of public parks according to the nature of the applicant and the content of his speech. No such attempt is present in this case.

The persistent and perplexing problem of making a reasonable and nondiscriminatory accommodation when fundamental rights collide cannot be solved in a vacuum. The factual situation is therefore extremely important in every case.

The record before us presents an ordinance valid on its face and without any evidence of discrimination in the manner in which it is construed and applied. The defendants have assumed in their argument that the question before this court is whether religious meetings can be prohibited in public parks. The issue which this case presents is whether the city of Portsmouth can prohibit religious and church meetings in Goodwin Park on Sundays under a licensing system which treats all religious groups in the same manner. Whether a city could prohibit religious meetings in all of its parks is a doubtful question which we need not decide in this case. What we do decide is that a city may take one of its small parks and devote it to public and nonreligious purposes under a system which is administered fairly and without bias or discrimination.

[Vol. 4] No question is presented in this case as to the validity of the fee charged for the use of the park in cer-

tain cases. The fee, which is usually nominal and frequently nonexistent, in no event can exceed the reasonable costs of policing the requested meeting.

The fact that some members of the city council thought the granting of a license for a church meeting in Goodwin Park would create a disturbance does not change the result. Although it was an erroneous and insufficient reason for denying the license (*Kunz v. New York*, 340 U. S. 290), it has long been the rule in this State that a wrong reason for a correct decision does not invalidate the decision. The main reason for denying the license was the municipal policy of restricting Goodwin Park to nonreligious public purposes and under the factual circumstances of this case was a proper one. See *Commonwealth v. Gilsedder*, 321 Mass. 335, 341.

Reliance is also placed on *County of Milwaukee v. Carter*; (Wis.) 45 N. W. (2d) 90, where an ordinance prohibiting religious services in public parks was held unconstitutional. That case is not in point since it purported "not to regulate but to prohibit speech in public parks on political as well as religious subjects." At this juncture it is important to state that in sustaining the Portsmouth ordinance no reliance is placed on *Davis v. Massachusetts* 167 U. S. 43, which is believed to have been so eroded by the force of time and recent decisions as to be valueless as a binding precedent.

Finally mention should be made of the judicial climate in which the Portsmouth ordinance is to be construed and applied. In their consistent effort to vindicate their civil rights, Jehovah's witnesses have been accorded protection here at times when and under circumstances in which these rights were not protected elsewhere. *State v. Lefebvre*, 91 N. H. 382; *Prince v. Massachusetts*, 321 U. S. 153; *State v. Richardson*, 92 N. H. 178. While they have not been allowed to push free speech to the point of abuse (*State v. Chaplinsky*, 91 N. H. 310; *Chaplinsky v. State of New Hampshire*, 315 U. S. 568), limitless discretion, arbitrary action and discriminatory practice on the part of municipal officers have never been allowed against Jehovah's witnesses. There is nothing in the record in this case to raise an inference that Portsmouth is guilty of palpable evasion of the

defendants' rights under any guise whatever. On the contrary the city has enforced with respect to one small park an honest, reasonable and nondiscriminatory licensing system which operates fairly on all.

Case discharged.

All concurred.

THE STATE OF NEW HAMPSHIRE.

ROCKINGHAM, SS.

OCTOBER TERM, 1951

Superior Court

No. 3411

STATE

vs.

ROBERT W. DERRICKSON

No. 3412

STATE

vs.

WILLIAM POULOS

RESPONDENTS' BILL OF EXCEPTIONS

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

OCTOBER TERM, 1951

Superior Court

No. 3411

STATE VS. ROBERT W. DERRICKSON

No. 3412

STATE VS. WILLIAM POULOS

RESPONDENTS' BILL OF EXCEPTIONS

The respondents present unto the Court the following Bill of Exceptions.

STATEMENT OF CASE

This is a prosecution for alleged violation of Article 7, Chapter 24, of the Ordinances of the City of Portsmouth, New Hampshire, reading, among other things, as follows:

"Section 22. License Required. No theatrical or dramatic representation shall be performed or exhibited and no parade or procession upon any public street or way, and no open air public meeting upon any ground abutting thereon shall

be permitted unless a license therefor shall first be obtained from the City Council.

"Section 23. License Form. Every such license shall be in writing and shall specify the day and hour of the permit to perform or exhibit, or of such parade, procession or open air public meeting.

"Section 24. Fee. The fee for such license shall be not more than Three Hundred Dollars for each day such licensee shall perform or exhibit or such parade, procession, or open air public meeting shall take place, but the fee for a license to exhibit in any hall shall not exceed Fifty Dollars.

"Section 25. Penalty. Any person who violates section 22 of this Article shall be fined Twenty Dollars."

COMPLAINT

Respondents were each proceeded against in the Municipal Court of Portsmouth by separate complaints for two alleged violations, one occurring on June 25, 1950, and the other occurring on July 2, 1950, under the above ordinance. The complaint in each case, among other things, reads as follows:

"Did on a certain ground abutting a public street, to wit, Islington Street and upon certain ground abutting thereto known as Goodwin Park, did conduct an open air public meeting without having first obtained a license from the City Council so to do".

The respondents pleaded not guilty in the Municipal Court. Each was found guilty, fined and appealed to the Superior Court of Rockingham County. On the first hearing before the Superior Court the case was reserved and at an earlier term transferred to the Supreme Court. The parties stipulated as to the facts. The Supreme Court held that the ordinance was constitutional because the park was limited in its dedication and permissive use by the City of Portsmouth. The case was tried in the Superior Court following the opinion

of the Supreme Court on pleas of not guilty entered by the respondents. An order was made consolidating both cases for trial. The Court heard and considered both cases as one case under the order of consolidation. The respondents waived the right of trial by jury and submitted the determination of all issues of fact and law to the Court without a jury.

Upon the trial the evidence of the prosecution and the respondents was reported by the official court reporter and the memorandum of the evidence transcribed by the stenographer is incorporated herein and made a part hereof as though copied at length herein, the evidence to be printed along with this bill of exceptions for use in the Supreme Court of New Hampshire.

At the close of all of the evidence and before argument of counsel and the pronouncement of the judgment of the Court, the respondents made a joint motion for a finding of not guilty, a judgment of acquittal and for dismissal of the prosecution on the grounds specifically set forth in the record of this Court, which motion was denied by this Court. The respondents seasonably objected and took exception to the denial of the respondents' motion for judgment of acquittal and a finding of not guilty, which motion reads as follows:

"Now come the above respondents and move the court to find the defendants not guilty, enter a judgment of acquittal and dismiss the prosecution for the following reasons:

"1. The undisputed evidence shows that the members of the city council and the city council itself acted arbitrarily, capriciously and without support of law and of fact when they denied the application made by Jehovah's witnesses in behalf of the defendants to deliver the public talks upon the occasions in question.

"2. The undisputed evidence shows that the park in question is a public park, dedicated as such without any limitations in the deed of dedication or in the ordinances of the City of Portsmouth and the defendants had the legal right to deliver the talks in the park and it was the duty of the city council to issue to the defendants permits to use

the public park in question for public meetings and public talks.

"3. If the ordinance is construed and applied so as to justify convictions of the defendants under the facts in this case, then the ordinance is unconstitutional as construed and applied because it abridges the rights of the defendants to freedom of assembly, freedom of speech and freedom of worship, contrary to the Bill of Rights of the New Hampshire Constitution and the First and Fourteenth Amendments to the Constitution of the United States."

Thereupon the Court took the case under advisement and on the 6th day of December, 1951 rendered and entered a finding of guilt or a verdict of guilty and filed a memorandum opinion reading as follows:

"These cases are appeals from the Portsmouth Municipal Court. The complaints charge the respondents with the violation of Chapter 24, Article 7, section 22, of the Municipal Ordinances of the City of Portsmouth. Section 22 reads as follows:

"Sec. 22. License Required. No theatrical or dramatic representation shall be performed or exhibited and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon shall be permitted unless a license therefor shall first be obtained from the city council".

"The respondents admit violations of the ordinance but take the position that the refusal of the Portsmouth City Council to issue licenses to them to speak on religious topics in Goodwin Park, a public park in Portsmouth, was arbitrary and unreasonable and that their constitutional rights of freedom of assembly, freedom of speech and freedom of worship have been violated contrary to the Bill of Rights of the New Hampshire Constitution and the First and Fourteenth Amendments to the Constitution of the United States.

"The constitutionality of the statute, Revised Laws, Chapter 174, sections 2 and 4, by virtue of which the city ordinance was enacted, was settled in the Supreme Court of the United States in *Cox vs New Hampshire*, 312 U. S. 569, and cannot now be questioned in these proceedings.

"Counsel have tried these cases on the theory that the refusal of the City Council to grant licenses to the respondents was in issue. It is found as a fact that the action of the City Council in refusing to grant licenses to the respondents was arbitrary and unreasonable, but the Court rules as a matter of law that this issue is not properly before it in these proceedings.

"The respondents could have raised the question of their right to licenses to speak in Goodwin Park by proper civil proceedings in this Court, but they chose to deliberately violate the ordinance.

"Verdict of guilty against both respondents."

Thereafter the Court duly pronounced sentence upon the respondents and fixed the punishment of each as follows: Twenty Dollars (\$20.00).

The respondents have duly excepted to the finding of guilty and the pronouncement of a judgment convicting the respondents and have duly taken steps to appeal the judgment of conviction to the Supreme Court of New Hampshire in the time and in the manner required by law.

This Bill of Exceptions, the complaint against each of the respondents, the evidence as transcribed by the official court reporter, the rulings of the Court on the admission and exclusion of evidence, motions and colloquies of Court and counsel, are made a part of this Bill of Exceptions and are to be printed as an appendix to this Bill of Exceptions. The exhibits may be referred to in the brief and upon oral argument in the Supreme Court but need not be printed. The exhibits are ordered sent up to the Supreme Court in their original form.

And now that justice may be done the respondents request that

this, their Bill of Exceptions, be allowed and the same transferred to the Supreme Court for judicial determination of the questions of law raised herein.

ROBERT W. DERRICKSON

WILLIAM POULOS

By

HAYDEN C. COVINGTON

HENRY M. FULLER

Attorneys for Respondents

ORDER ALLOWING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions is hereby allowed, and all questions of law thereby raised, as well as any other questions raised by exceptions taken during the trial as shown by the record, are reserved and transferred. A transcript of the testimony and proceedings had during the trial, together with one copy of each complaint against both of the respondents, to be printed as an appendix to the Bill of Exceptions. All exhibits offered during the trial may be used in their original form in the Supreme Court. Such exhibits are hereby ordered sent to the Supreme Court of New Hampshire along with the record in this case but need not be printed unless that court so directs.

HAROLD E. WESCOTT

Presiding Justice

COMPLAINT AGAINST ROBERT W. DERRICKSON

that Robert W. Derrickson of said Portsmouth, on the twenty fifth day of June in the year of our Lord one thousand nine hundred and fifty at Portsmouth with force and arms, did on a certain ground abutting a public street, to wit, Wellington St. and upon certain ground abutting thereto known as Goodwin Park, did conduct an open air public meeting without having first obtained a license from the city

council so to do contrary to the form of the city ordinance in such case made and provided, and against the peace and dignity of the state.

COMPLAINT AGAINST WILLIAM POULOS

that William Poulos of Manchester, N. H. on the second day of July in the year of our Lord one thousand nine hundred and fifty at Portsmouth, with force and arms, did on a certain ground abutting a public street, to wit, Islington Street, and upon certain ground abutting thereto, known as Goodwin Park, did conduct an open air meeting without having first obtained a license from the city council so to do contrary to the form of the city ordinance in such case made and provided, and against the peace and dignity of the state.

Trial before Honorable Harold E. Wescott, Presiding Justice
At Exeter, New Hampshire, December 3, 1951

Mr. Reinhart: We wish to read the complaint, your Honor please.

Court: They have signed waivers of jury trial.

Clerk: This is arraignment of Robert W. Derrickson.

Mr. Covington: May it please the Court, Mr. Derrickson is not now in the courtroom. He has been in the hospital and he is of course extensively disabled, but we will waive the reading of the complaint and arraignment and consent to trial without jury. I will have a written jury waiver and will have him sign, and this other defendant—

Court: He's already signed the waiver.

Mr. Covington: Mr. Poulos signed it. Did Mr. Derrickson? We are ready also in the Poulos case, may it please the Court and the same situation exists there.

Court: You plead not guilty?

Mr. Covington: Not guilty and then—

Court: All right.

AMERIGO J. BELLUCCI Sworn Mr. Bellucci, called by State being duly sworn, testified as follows:

Q. (By Mr. Reinhart): State your name and residence. A. My name is Amerigo J. Bellucci, residence Portsmouth, New Hampshire. Q. What is your official position? A. City Clerk of the City of Portsmouth. Q. As City Clerk do you have custody of the records regarding the issuance of permits? A. I do. Q. Have you examined your records to ascertain whether or not a permit had ever been issued to Robert W. Derrickson? A. Yes sir. Q. You have so examined? A. Yes. Q. And whether or not a permit had ever been issued to the said Robert W. Derrickson to conduct an open air, to speak in a public park? A. No. Q. At Goodwin Park in Portsmouth? A. No permit. Q. No permit has ever been issued. Now at my request have you also examined your records to ascertain whether a permit had ever been granted to William Poulos? A. Yes. Q. And what was the result of your investigation? A. No permit could be found. Mr. Reinhart: No permit has ever been issued.

Cross Examination Q. (By Mr. Covington): Now sir are you familiar with the ordinances in the City of Portsmouth? A. I am somewhat familiar, yes. Q. Do you have the city ordinances in your custody, copies of them? A. Yes I do. Mr. Covington: Do you have those please? Mr. Reinhart: Yes. Q. (By Mr. Covington): I show you a book of the ordinances of the City of Portsmouth and ask you to identify what I present to you. First, tell the Court what that is please. A. Well it's the ordinance pertaining to issuance of licenses for, as it says, theatricals, parades or open air meetings. Q. Would you mind reading that ordinance to the Judge? The entire thing. A. Article 7 entitled Theatricals, parades, open air meetings. Section 22. License required. No theatrical or dramatic presentation, representation shall be performed or exhibited and no parade or procession upon any public street or way and no open air public

meeting upon any ground abutting thereon shall be permitted unless a license therefor shall first be obtained from the City Council. Section 23. License form. Every such license shall be in writing and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open air public meeting. Section 24. Fee. The fee for such a license shall be not more than Three Hundred Dollars for each day such licensee shall perform or exhibit or such parade, procession or open air public meeting shall take place but the fee for a license to exhibit in any hall shall not exceed Fifty Dollars. Section 25. Penalty. Any person who violates section 22 of this article shall be fined Twenty Dollars. Q. Is that all? A. That is all. Q. Now in that book of ordinances do you have any other ordinances, rules or regulations in respect to the use of the parks of the City of Portsmouth? A. Well offhand I could not say without making a study. Q. Well can you tell us whether that is the only ordinance there is in reference to the use of the public parks for public meetings? A. Well I would say that I used that ordinance in issuing permits in such— Q. Is there any other ordinance in the books that pertains to the issuance of permits for the use of parks for any sort of public meetings? A. I'd say offhand I don't know. Q. Would you mind looking through that then since you say you don't know and tell us if in that book of ordinances you find any other ordinances or rules or regulations in respect to the use of any one park or the use of all the parks of Portsmouth? Will you please go through it carefully because counsel is not in a position to stipulate that that is the only ordinance because he doesn't know whether it is or is not the only ordinance. A. The question again please. (Question read by stenographer) A. I can find none here that pertain to the parks or any one park. Q. In other words, we can take it that there is no other ordinance or no other set of rules and regulations in respect to the use of any one or all of the parks by permit from the City Clerk except that which you have read into the record. Is that correct? A. I would say so. Q. All right sir. Are you familiar with the maps or map of the City of Portsmouth showing the location of the various parks? A. I am somewhat. Q. I show you an official map showing the streets of Portsmouth and the blocks

or squares of the City surrounded by the streets and I ask you to tell the Court, if you can locate or verify the location of the various parks that are identified on the map. I point your attention to the arrow having written in it the Plains Park and ask you to state whether that is— A. The Plains Park is at the intersection of Islington Street and Middle Road where it joins to meet Greenland Road. Q. Middle Road and Plains Avenue? A. No, Islington Street and Middle Road. Q. And it's also surrounded by Plains Avenue, intersects— A. Islington Street. Q. Middle Road? A. And Middle Road. Q. All right. And the spot that is identified as Plains Park by areas is correct, is that right? A. Yes. Q. Now then, I show you the next park that I point to being Langdon Park and ask you to describe to the Judge the location of that park as best you can. I'll ask you whether or not the location shown on the map is correct and accurate? A. Langdon Park seems to be in the place where I would think it would be. Q. Now then, give us the street. A. Well it's off Junkins Avenue. Q. Junkins Avenue. A. And— Q. It's near South Street, isn't it? A. Yes. Q. South Street runs along here, it's between South Street and Rockland Street, is it on Junkins? A. Yes. Q. South Park, where is that? A. South Park. Q. Just below north. A. It is north of Junkins Avenue off Rockland Street. Q. Rockland Street, isn't it, that is where South Park is located? A. Yes. Q. Where is Haven Park situated? A. Haven Park is between Howard Street and Livermore Street. Q. And where is Pierce Island Park located? A. Pierce Island Park is on the island, on Pierce Island just off Gates Street. Q. Now where is Liberty Bridge Park located? A. Liberty Bridge Park is located on Marcy Street just off Newton Avenue. Q. And where is Prescott Park located? A. That is also on Marcy Street just off Court Street. Q. And where is Goodwin Park, the park, I'll ask you where is Russell A. Hanson Park located? A. That is in the section of town or city known as Atlantic Heights and it's just off Kearsarge Street, it's at the intersection of Ranger Way and Kearsarge Way and forms a little triangle with, looks like Baldwin Way. Q. Now then, where is the park in question, Goodwin Park, located? A. Goodwin Park is located off Islington Street just opposite Rockingham

Street, Cornwall Street and Langdon Street which go off Islington Street. Q. And is Goodwin Park located in the center of the business district for the City of Portsmouth? A. I would say no. Q. Well where is it with reference to the business district? A. Well it's I would say west of the business district. Q. All right. But does a public route go by it, one of the main thoroughfares? A. Yes. Q. Which route? A. Islington Street. Q. You said road? A. I said yes to that. Q. Road. A. There is route 101, whether that goes by there or not I don't know. Q. But anyway this is a thoroughfare in the City of Portsmouth? A. Yes. Q. Located you say a little west of the business district? A. Yes. Q. Would you tell us whether the map I have shown you with the various arrows indicating the various parks you have identified, are those parks located at approximately the spot and location shown on the map? A. I would say yes. *Mr. Covington:* We offer into evidence the map that has been identified by the witness as the Defendants' Exhibit number 1 or A. *Court:* It isn't marked as yet. Been identified by the witness, if there is no objection it will be marked Defendants' Exhibit A. *Mr. Reinhart:* No objection. (Marked Defendants' Exhibit A) Q. (*By Mr. Covington:*) Do you have a record of the permits that have been issued by the City of Portsmouth in the last five years for the holding of meetings in the public parks? A. Well if I can answer that indirectly I have only been in office one year and I have never investigated to see whether I have the permits going back five years so I don't know. Q. Do you have any of the permits or records of permits in your possession now in Court? A. Yes. Q. You do? A. With me in my possession? Q. Yes. A. No sir. Q. Would you mind getting those permits for us, records of permits for us? A. Right now? Q. When you get through from the stand if you can get them brought here, have someone in your office bring them here and then when we resume following lunch you can take the stand again and explain about those permits. A. Yes. *Mr. Covington:* All right sir. *Mr. Reinhart:* You mean just permits to hold meetings? *Mr. Covington:* Meetings in various parks. A. I will have to bring them all. They're not segregated. Q. All right, bring them all and we will go into that following the noon recess.

Court: Where are the records, in Portsmouth? *Witness:* In the City of Portsmouth. *Q. (By Mr. Covington):* Now were you in office when Mr. Derrickson made an application to use these premises? *A.* Do you have the approximate date? *Q.* May 4th in the year 1950. *A.* No I was not. *Q.* You were not. I show you Defendants Exhibit B for identification and ask you if that is not what it purports to be, an agenda of the City Council meeting for May 4th, 1950? *A.* It appears to be. *Mr. Reinhart:* No objection. *Mr. Covington:* Defendants' exhibit— *Court:* Let me see it. (Mr. Covington at bench) *Mr. Covington:* I will have it attended to later. That's all. *Court:* Any further questions? *Mr. Reinhart:* No further questions.

FORREST E. HODGDON, JR. Sworn. Mr. Hodgdon, called by State, being duly sworn, testified as follows:

Q. (By Mr. Reinhart): What is your name and address? *A.* Forrest E. Hodgdon, Jr., 64 Hill Street, Portsmouth, New Hampshire. *Q.* Are you a police officer of the City of Portsmouth? *A.* I am. *Q.* And on June 25th, 1950 did you arrest the defendant Derrickson? *A.* I did. *Q.* Where was he at that time? *A.* Goodwin Park. *Q.* What was he doing? *A.* Having an open air meeting. *Q.* What did you do when you first arrived at Goodwin Park on that day? *A.* I asked Mr. Derrickson if he had a permit. *Q.* What did he say? *A.* Mr. Derrickson said no he had no permit. *Q.* What did you say? *A.* I told Mr. Derrickson that he had to stop the meeting where he had no permit. *Q.* What did he say to that? *A.* Mr. Derrickson told me that the only way that he would stop is that I would have to place him under arrest which I did. *Mr. Reinhart:* You may inquire.

Cross Examination Q. (By Mr. Covington): Officer, was Mr. Derrickson creating a disturbance, was he using any loud or profane language? *A.* No I would not say he was using any profane language, no. *Q.* All right sir. Now was he agitating the people to fight? *A.* Not when I arrived there, no. *Q.* When you heard him he was acting gentlemanly I suppose? *A.* Yes. *Q.* All in the world he was doing was talking to an audience on a bible subject, isn't that

correct? A. That's right. Q. Did you hear anything that he said? A. No I didn't. Q. Not a word? A. No I couldn't recall. Q. You cannot at this time recall anything you heard him say, is that it? A. No. I know he was preaching the gospel but as far as what I heard him say I couldn't tell you. Q. But he did tell you he was preaching the gospel, did he not? A. Beg pardon? Q. He did inform you that he was preaching the gospel, did he not? A. No he didn't inform me, no. Q. But you knew that, that he was preaching the gospel, is that right? A. Yes. Q. All right sir. Now tell us what transpired, did he talk to you or you talk to him? A. Yes, I tapped him on the shoulder and he turned around and asked what he could do for me. I asked him if he had a permit. Q. He was talking to an audience, was he not? A. Yes. Q. There were several people in the park listening to him? A. That's right. Q. About how many were standing around there? A. Oh I would say approximately twenty to twenty-five, I didn't count them. Q. And Goodwin Park is a pretty good sized park, isn't it? About quarter of a block in size or half a block in size? A. Well it's a pretty good sized park, yes sir. Q. Was Mr. Derrickson and his group of listeners taking up all the park? A. No. Q. They were only in a little section of it, were they not? A. That's right. Q. Were they under the trees in the shade? A. I believe they was right in front of the monument. Q. In front of the monument? A. That's right. Q. The monument is in the center of the park, isn't it? A. I believe it is. Q. And other people could walk around in the park, could they not, while the meeting was going on? A. Oh yes they could. Q. There were other people in the park that were not in this group, were there not? A. I believe there were. Q. Sitting on the benches? A. I didn't take too much particular— Q. Sir? A. —look in the other part of the park. Q. There was no one in the park that complained to you about Mr. Derrickson being in the park? A. No I had no complaint from the park. Q. From anybody in the park? A. No. Q. That's right. And he didn't try to drive anybody else out of the park or keep them from using the park, did he? A. I don't think so. Q. And your only complaint against him was he did not have a permit, is that right? A. That's right. Q. In the City of Ports-

mouth it's necessary for anyone to have a permit before he can have a meeting in the park, isn't that right? A. That's right. Q. Under the ordinances? A. That's right. Q. Some meetings have been held with permits, have they not? A. Well I couldn't tell you. Q. You are not familiar with that? A. I'm not familiar with that. Mr. Covington: All right sir. That's all.

Mr. Reinhart: The State rests, your Honor.

Mr. Covington: Mr. Poulos, will you take the stand?

Mr. Reinhart: Excuse me just a moment. Will you need Officer Hodgdon again?

Mr. Covington: I don't think so.

WILLIAM POULOS Sworn Mr. Poulos, defendant, being duly sworn, testified as follows:

Q. (By Mr. Covington): Will you please state your full name sir? A. My name is William Poulos. Q. Where do you live? A. I live in Manchester, New Hampshire. Q. What is your occupation? A. My occupation is that primarily a minister of the gospel. Q. What is your secular avocation? A. My secular avocation is that of a carpenter. Q. Your vocation is that of a minister, is that correct? A. Yes sir. Q. In what organization do you perform your duties as minister? A. With, I work in conjunction with the Watchtower Bible and Truth Society otherwise known as Jehovah's witnesses. Q. The Watchtower and Truth Society is a religious corporation, is it not? A. It is. Q. It acts as the legal governing body of the unincorporated groups of missionary ministers known as Jehovah's witnesses? A. That is right. Q. Jehovah's witnesses are an international group? A. They are to be found throughout the entire world. Q. And the headquarters of the society that does the work of Jehovah's witnesses is located in Brooklyn? A. That is right. Q. Jehovah's witnesses are also in New Hampshire, are they not? A. They are at the present time and have been for a good many years. Q. There are congregations in all the big cities, are there not? A. Yes there are. Many of the small ones as well. Q. I didn't hear? A. And many of the small ones as well. Q. There

are congregations in both the large and small cities of New Hampshire? A. Yes. Q. Now what congregation of Jehovah's witnesses are you affiliated with? A. With the Manchester, New Hampshire congregation. Q. And are you familiar with the congregation of Jehovah's witnesses located at Portsmouth? A. Yes I am sir. Q. And in the summer of 1950 did you have occasion to deliver a public talk at the invitation of the Portsmouth, New Hampshire congregation of Jehovah's witnesses? A. I did have occasion. Q. Who invited you to deliver the talk? A. The company servant of the Portsmouth congregation, Mr. Derrickson. Q. You mean he is the presiding minister of the Portsmouth congregation, is that correct? A. That is quite correct. Q. Now did he telephone you or write you as to the time and place that you would be expected to deliver a talk to the people here in Portsmouth? A. He extended an invitation through the mail. He wrote me. Q. And what was the subject that you were to speak upon? A. The advertised topic was "Preserving Godliness Amid World Delinquency". Q. What date was it that you were to deliver your talk? A. It was July the 2nd on Sunday July 2nd. Q. Of 1950? A. Of 1950. Q. At what time was it? A. Three o'clock in the afternoon. Q. Tell us what took place from the time that you arrived in Portsmouth, what you did, where you went to and how it was that you, and what you did after you got there and what you saw. A. Yes. Q. And what you said. A. When I arrived in Portsmouth by the use of a car, I drove my own car to Portsmouth from Manchester and I arrived at Goodwin Park just about fifteen, perhaps twenty minutes before the scheduled talk was to start. I was met by a Mr. Robert Smith. Q. Who is he? A. Mr. Smith is also one of the Jehovah's witnesses. Q. Associated with the Portsmouth congregation? A. Portsmouth congregation. Q. All right. Tell us what took place. A. Well we waited until the appointed hour and precisely at three o'clock we began our talk, I began to talk to the— Q. Well, wait a minute. Before you started talking did you have a group of people assembled there? A. Yes there was a group of people. They congregated at the base of the monument. Q. Yes and you were standing with your back to the monument? A. No, I was facing the monument. Q. About how far

were you from the monument? A. Well I would estimate about fifteen to twenty feet. Q. Between you and the monument was this group of people in the park, is that correct? A. That is correct. Q. Now tell us whether you had a permit or not? A. I had no permit. Q. All right sir. Previous thereto application had been made for permission for Jehovah's witnesses to use the park, is that correct? A. An application had been made to the Council, that is right. Q. And denied. Now will you please tell us what took place while you were in the park there in your own words, you tell the Judge what you did and what you said, the substance of it, you don't have to use the exact words. A. Well as I started to say a moment ago, at three o'clock I began my scheduled talk. I had on hand my bible and a few notes at the time to make coherence and I in front of the audience that was congregated at the base of the monument, some of them sat on the curb of the monument, and I began to talk on the advertised topic. I began to explain to them the reason for such a talk, what necessitated it. Told them that they were quite aware of the delinquency raging throughout the world. I showed by chapter outline how the delinquency which is rampant upon the earth has come to its apex having been increasing by generations down through the ages even so very wicked at one time in the days of Noah that God saw fit to destroy that generation of people, and the purpose of that talk, what it has in store, is endeavoring to work out through a congregated lot of people today is to inform the people of the coming diaster, world disaster, the approach of the great cataclysm of Armageddon the Bible refers to it as a great day of God Almighty and it is absolutely necessary for people to take an intelligent stand in the light of truth and religion, to turn aside from the ways of the world and take our aid to people in this connection. We just didn't wish it, you have to appeal to their intelligence. That was the gist of my conversation or talk to the people up until the time of the police officers. I had a few more words relative to that subject. Q. What did you say? A. Told them means God has provided, no way of disturbance, that is to be found throughout the entire world as kingdom of God, that no form of government over that, in other words, God rules. My purpose in stating that was to show them it was not the

plans of Jehovah's witnesses to ignore this rule but simply to inform the people that God's divine. As far as I can say the audience was very attentive. There was no disturbance and they seemed to appreciate all what was being said. Q. You say there was no disturbance, did you use any abusive or profane language throughout your talk? A. No sir. Not at any time. Q. Did you talk unduly loud and annoy other people in the neighborhood by your tone of voice? A. I must say that I didn't because I had difficulty of being heard what I had to say even at that time. Q. You mean your audience that was immediately around you within the circumference or within the distance had difficulty, is that correct? A. Yes. Q. But in any event did you prevent anybody else from using that park? A. I did not. Q. Did any person in the park come to you and object to your being in the park? A. No sir. Q. Now were you allowed to finish your talk? A. No, I proceeded then about ten minutes or fifteen minutes before I was encountered by the arresting officer. Q. Tell us what took place. A. As in the case of Mr. Derrickson the officer tapped me on the shoulder, I turned around toward the officer. Q. Officer tapped you as he did Mr. Derrickson, is that right? A. Yes. Q. Tell what occurred, what you said and what was done. A. I asked him, he asked me if I had a permit to deliver the talk, I informed him that I didn't have a permit. I also told him one wasn't necessary because we have our constitutional right to speak especially on a Bible sermon. And he wasn't too concerned with that, he had a duty to perform he told me. Q. Can you tell us what took place after that? A. He asked me to accompany him to the police station stating I was under arrest because I told him I could not possibly leave the congregation there until I had concluded my talk and he said it would be impossible to conclude, words to that effect, I don't exactly remember, and he said that I would have to be put under arrest and I was put under arrest and taken to the police station in his police cruiser. Q. Did you attempt to show him or have conversation with him about Mr. Derrickson having attempted to get a permit from the City Council? A. When I got to the police station. Q. Tell us what took place. A. I told him Mr. Derrickson some time previous to this particular occurrence had applied for

a permit. Q. In behalf of Jehovah's witnesses? A. In the name of Jehovah's witnesses. Q. For this particular talk? A. Yes. Q. What took place, what was said about that, what did you say? A. I recall the officer's name, it was Mr. Whitehouse. I told him the preview of our meeting, it was for giving a message regarding the kingdom of God and that we had a perfect right, I followed the same line of conversation I had in the park, that we had a perfect right to do such a, right to preach the gospel, conduct an open air meeting, I told him, and he didn't seem too opposed but he said that he had no jurisdiction in the matter and that I would have to talk with his superior officers. I informed him the reason I told him that the matter is vital, various individuals should know about it. That is the reason I did tell him that. Q. Now Mr. Poulos, the talk that you had to deliver, had you been able to finish it what concepts did it relate? A. Well the subject itself, as I said in previous testimony, it dealt with this delinquent situation in the world, delinquency in every form which is to be found today, I guess nobody will dispute that fact, and I would have told the people that from the God's creation more or less such condition has been upon the world and it has been instilled in the men, men who do not listen, have no proclivity towards the words of Almighty God and they have been carrying on this campaign of delinquency and in order to oppose the works of Almighty God. I would have told them further that the purpose of that, that they allow these things to continue without interference is because He has a definite purpose to show. The bible shows that, ordinances of the bible, the bible shows God has foreseen about all this, that those who are in this part of the universe, because this is where delinquency first arose, and Almighty God, and try to sweep the world in delinquency, that we should not be perturbed unduly about these conditions because we know fully well we have God's word that he is going to cancel them out forever. The means he takes to do this, I would have further told them the means he takes to do this is through the kingdom of heaven, we pray for that kingdom and the model prayer which we are instructed by Christ Jesus when he said, "Our Father in heaven, hallowed be your name, your kingdom come", and I believe that and we want other people

to believe it too because we know that is the means by which salvation and an end to all these disturbing conditions would come to an end but before this could be fully accomplished men from every walk and every avenue in life, men of all walks would have to come and pay their obeisance to the Almighty God. That we ourselves are merely heralds and not trying to advocate the overthrow of any form of human government. Yes, and I would have told them it was to their benefit and I have to take a firm stand in behalf of such principles in the word of the Almighty God. Q. All right now then. Would you have said anything that would have tended to create a breach of the peace or disturb the enjoyment of the park by any other person? A. I assure this Court that I would not have. Q. Why was it please that you persisted in your desire to continue talking after the command of the officers that you desist, stop? A. We feel, your Honor, that we are primarily subject to the Almighty God. We try to obey every law that concurs with the will of Almighty God, that does not conflict with the will of Almighty God. We know that this form of government allows its citizens to perform their religious duty uninterrupted and they have a privilege of expressing their views without any form of interference. Whether that is priests or any other forces, and I simply stood upon my constitutional grounds and of course I would like to say that I felt keen responsibility to give this message to those there congregated. Q. In other words you weren't taking the stand just to be defiant? A. No sir, I was not. Q. Incidentally, you were arrested, is that right? A. I was, yes sir. Q. And both you and Mr. Derrickson were tried, that is, prosecuted and convicted together in the Municipal Court here in Portsmouth, is that right? A. Yes we were. Q. And you took appeals, both of you, to this Court? A. Yes. Q. And the charge is of course that you had public meetings in this park without permit from the City Council, is that correct? A. That's quite right. Mr. Covington: I believe that's all.

Cross Examination Q. (By Mr. Reinhart): Mr. Poulos, had you applied for a permit to the City Council to speak at Goodwin Park? A. I came at the invitation of the local congregation. Q. You didn't answer my question. A. I personally you mean? Q. My

first question, did you apply for a permit to the City Council to speak at Goodwin Park? A. I personally didn't, no. Q. Was there ever a petition filed with the City Council on your behalf for you to speak at Goodwin Park? A. I'm not in a position to answer that question. I don't know. Q. Did you know that there was a municipal ordinance which required the granting of a permit before you could speak at Goodwin Park? A. Yes I was under the assumption that there was that apparent law. Q. And you knew at the time that you did speak that you did not have such a permit? A. That I did not have a permit, that's right. Q. In other words, you knew that to be the law but you still went ahead in defiance of the law? A. I knew that to be the law, that's right, I did go ahead but not in defiance of the law. Q. You, as I understand your position you went ahead on the belief that you had a right to speak in a public park in the City of Portsmouth even though you had never applied for a permit and even though no permit had ever been granted? A. Yes that's right. Mr. Reinhart: No further questions.

(Noon recess)

PAUL F. CONNORS Sworn Mr. Connors, called by State, being duly sworn, testified as follows:

Q. (By Mr. Reinhart): Will you state your name and address? A. Paul F. Connors, 432 Sherburne Road, Portsmouth, New Hampshire. Q. You are a police officer in the City of Portsmouth? A. I am. Q. On June 25, 1950 did you in company with Officer Hodgdon place the defendant Derrickson under arrest? A. I did. Q. Will you just briefly state to the Court — A. We received a radio call in the cruiser to go to Goodwin Park on Islington Street, that there was a meeting going on. We went to the park and asked a man by the name of Mr. Derrickson if he had a permit to conduct a meeting. He said no he did not. We told him he would have to break up his meeting or else we would have to take him to police headquarters. He says, "Well you will have to take me to police headquarters", continued then to conduct his meeting. Mr. Reinhart: That's all, officer, thank you very much.

HERBERT L. WHITEHOUSE Sworn Mr. Whitehouse, called by State, being duly sworn, testified as follows:

Q. (By Mr. Reinhart): Will you state your name and address please? A. Herbert L. Whitehouse, 122 Essex Avenue, Portsmouth, New Hampshire, police officer in Portsmouth. Q. On the 2nd day of July 1950 did you place the defendant Poulos under arrest? A. I did. Q. And you will state the circumstances. A. Yes sir. I was in the cruising car and I received a call to go to Goodwin Park, there was an open air meeting being held, and as I approached Mr. Poulos I asked him if he had a permit from the Council to hold such an open air meeting and he told me he did not and I told him he would have to disband the meeting, and he said the only way he would disband the meeting was to place him under arrest so I placed the defendant under arrest and brought him to the station. Mr. Reinhart: That's all. Mr. Covington: No questions.

Court: I understand the defendants have no objection to this procedure?

Mr. Covington: None at all. You mean the procedure for calling them for questioning?

Court: Yes.

Mr. Covington: None whatsoever.

Mr. Reinhart: The State now rests in both cases, Derrickson and—

Court: You rested before.

Mr. Reinhart: That's right.

Court: Procedure is agreed to by defendants.

NAT S. STEVENS Sworn Mr. Stevens, called by defendants, being duly sworn, testified as follows:

Q. (By Mr. Covington): Will you please state your name? I show you Defendants' Exhibit— Court: Let's have the witness's name and address. Q. (By Mr. Covington): Will you please state your name and address? A. Nat Sidney Stevens, 512 Broad Street, Portsmouth, New Hampshire. Q. Your occupation? A. Superintendent of Public Works. Q. And in connection with what municipi-

pality? A. City of Portsmouth. Q. And how long have you served in that capacity? A. Since 1949. Q. Are you familiar with all of the parks in the City of Portsmouth? A. Yes sir. Q. I show you Defendants' Exhibit A which is a map of the City of Portsmouth on which certain parks are named and located by marks as well as the names of the various parks, I ask you to look at that map and tell us whether or not it has marked on it the approximate location with respect to the parks including Goodwin Park? A. Including Goodwin Park? Q. Yes sir. A. It has sir. Q. All right sir. Now what are your duties and responsibilities in reference to the maintenance and use of the various public parks in the City of Portsmouth, New Hampshire? A. My immediate superior, the City Manager of the City of Portsmouth, who has charge of the parks and playgrounds and I am directly under him and assume the responsibility for the maintenance of the parks from him. Q. From him? A. Yes sir. Q. And not the use? A. No sir, I have nothing to do with the use. Q. The matter of use by permit is vested in the City Council of which the Mayor is a member, is that correct? A. That is correct. Q. And anyone desiring to use the parks must apply for a permit, is that correct? A. By petition to the Mayor and Council sir. Q. Mayor and the Council? A. Yes sir. Q. I show you a group of four pictures and I ask you tell us what these pictures represent. Mr. Covington: I'll ask that they be identified as C-1, C-2, C-3 and C-4 respectively. Maybe we better have them marked. Court: Is there any objection? Mr. Covington: All pictures of Goodwin Park. Mr. Reinhart: Who took them? Mr. Covington: They are by Donald Iverson, free lance photographer. Mr. Reinhart: No objection. Mr. Covington: It is a professional photographer. Court: They may be marked as an exhibit at this time. (Marked Defendants' Exhibits B-1, B-2, B-3, and B-4) Q. (By Mr. Covington): On that map there is a spot described as Goodwin Park, is that not correct? A. That is correct. Q. I show you a group of four exhibits being Defendants' Exhibit B-1, B-2, B-3 and B-4 and I ask you to tell us whether or not these are pictures of Goodwin Park from various angles and directions? A. This is Goodwin Park taken from State Street looking across to Islington Street. Q. Yes sir. A. This is

Goodwin Park taken from— Q. Would you identify this one as B, the one you just identified as B-1. Now you have B-2 in your hand? A. It is a picture of Goodwin Park standing in the east and looking a little bit northwest. Taken at the monument. Exhibit B-2. Q. Taking Exhibit B-3. A. Taken from the west toward the east, shows the monument and part of Islington Street, B-3. Taken from Islington Street looking at the monument and shows State Street in the background, B-4. Q. Showing you a group of exhibits C-1, 2, 3, 4. Mr. Covington: I suppose you have no objection? Mr. Reinhart: What is the purpose of introducing these? Mr. Covington: To show whether or not— (counsel talking together) Mr. Reinhart: I am not objecting to the photographs as such, I will admit they were taken and properly taken. I'll admit there are these other parks in the City of Portsmouth but I have to raise the objection to being inadmissible as far as this particular issue is concerned. Case of violation of holding a hearing in Goodwin Park, one specific park. Court: I think they may be marked unless there is some other objection. That is your only objection? Mr. Reinhart: That is my only objection. Court: I think they may be marked. (Marked Defendants' Exhibits C-1, C-2, C-3, C-4) Q. (By Mr. Covington): Show you the exhibits that I have referred to, being C-1 to C-4 inclusive and I ask you to tell us whether or not these are pictures of the Plains Park located in the City of Portsmouth, also identified on the map? A. C-1 is a picture of the Plains Park taken from the east looking toward the west. Q. All right sir. Thank you. Mr. Reinhart: Be all right. Admit they are pictures. Court: Perhaps we should have something in the record. Mr. Covington: Otherwise we don't know what they are. Witness: C-2 is the Plains Park showing the small baseball diamond and looking pretty much toward the north, C-3 is a picture of the baseball diamond and snow fence taken from the west looking toward the east. Q. Yes sir. A. And C-4 is taken from the south looking toward the north from the park. Q. Thank you sir. And I show you now a group of pictures of Lambert Bridge Park being Exhibits D-1 to D-4 inclusive. Just wait sir. (Marked Defendants' Exhibits D-1, D-2, D-3, D-4) Q. Will you please explain to the Judge now what these various exhibits are, D-1 to D-4 inclusive?

A. This shows a view of the park known as the Liberty Bridge Park according to this map. It's not the property of the City of Portsmouth as yet so that we have no maintenance to it and I'm not too familiar with it. I do know that is a picture showing the park which is marked on the map here as Liberty Bridge Park. Q. It's not the property of the City? A. It is not yet. Q. Not a part of the City? A. No sir. Q. Title is in the City, isn't it? A. I cannot answer that except that we have no maintenance of it so I'm not sure. Q. You can't be sure whether or not title is in the City but so far as you are concerned it is not yet under your jurisdiction? A. Correct sir. Q. That is because it hasn't been opened up yet for public use? A. As far as the City of Portsmouth is concerned, yes sir. *Mr. Covington:* All right, we will connect it up. *Mr. Reinhart:* Until such time as it is properly connected I will object to it. *Mr. Covington:* We will establish— *Court:* Subject to that— *Witness:* There is another picture showing the Liberty flagpole which is a landmark in the City of Portsmouth. Q. (*By Mr. Covington:*) That is Defendants' Exhibit D-4 you just referred to? A. Yes sir. That is an old landmark in the City of Portsmouth. Q. All right. The next exhibit. A. Taken of this Liberty Bridge Park. Q. You have in your hand Exhibit D-2 and D-3. A. That's right. Q. And you just know they are photographs of the park? A. Of that park, yes sir. Q. Which is not yet open to the public? A. Not as far as— Q. For public use? A. That is as far as the City of Portsmouth is concerned. Q. Yes. I show you now a group of pictures of Russell A. Hanscom Park marked as Exhibit E-1 to 4 inclusive, and I ask you to explain to the Judge what each picture represents. (Marked Defendants' Exhibits E-1, E-2, E-3, E-4) A. Exhibit number E-1 is Hanscom Park which is situated at Atlantic Heights and I believe that view is taken from the north looking toward the south. Here is Exhibit E-2 which is taken at the junction of roads on the west side looking toward the east. Exhibit E-3 is taken from the west side, rather from the east side looking toward the west. And Exhibit E-4 is taken from the north side looking pretty much south-east. Q. I show you another group of photographs being F-1 to F-4 inclusive, being photographs of Haven Park in the City of Ports-

mouth, shown on that map, and I ask you to please take each exhibit and explain to the Judge what each represents. (Marked Defendants' Exhibits F-1, F-2, F-3, F-4) Q. Look on the back of each picture first to identify it. A. F-1. To me it is a view taken from the north looking toward the south, shows the monument and also a piece of Pleasant Street. F-2 taken from the north and looking through the park, that would be south, showing part of Pleasant Street. F-3 taken from Pleasant Street showing the monument and looking approximately north. F-4 taken from the northwesterly corner of the park showing the monument and southeast. Q. I show you another group of four photographs which are, purport to be photographs of South Park which is identified and located on the map. They are Exhibit G-1 to G-4 inclusive. I ask you to take each and explain to the Judge what appears in each picture, identifying each one by exhibit number first. (Marked Defendants' Exhibits G-1, G-2, G-3, G-4) A. Picture taken from the east toward the west shows some of the small equipment at the playground. Q. What exhibit? A. G-1. G-2 taken from Junkins Avenue and looking east or rather looking west at the park and houses in the background. G-3 to me that is a view, view in the park. And G-4 is taken from the south looking toward the north, shows part of the children's playground and part of the South Mill Pond. Q. I show you another group of photographs which purport to be pictures of Prescott Park that are identified as H-1 to 4 inclusive. I ask you to take each, first identifying the picture by exhibit number, and explain to the Judge what each represents. (Marked Defendants' Exhibits H-1, H-2, H-3, H-4) A. H-1, Prescott Park taken from the south side and looking to the northwest. H-2 taken from the east and looking in a westerly direction up through the park. H-3 taken on Court Street and looking east into the park and showing the water. H-4 taken in the northwest corner looking southeast and showing part of the waterfront. Q. I now show you three photographs apparently taken of Langdon Park located in the City of Portsmouth appearing also on that map before you and I ask you to identify each by exhibit number and then explain to the Judge what each of the three represents. (Marked Defendants' Exhibit I-1, I-2, I-3) A. I-1 of Langdon Park taken

at the south side of the park and looking north, it shows part of Junkins Avenue and Lincoln Avenue. I-2 is a view of Langdon Park looking from Junkins Avenue looking in an easterly direction toward Lincoln Avenue. I-3 is taken at the northeasterly side of the park and Junkins Avenue and looking down across Lincoln Avenue. Q. show you two additional pictures being photographs of Pierce Island Park that's heretofore been identified on the map situated in the City of Portsmouth, I ask you to take each picture, identifying it by exhibit, and then explain to the Judge what each represents. (Marked Defendants' Exhibits J-1 and J-2) A. J-1 is a view of Pierce Island taken from the remains of the old fort looking in a westerly direction toward the swimming pool. J-2 is a view of Pierce Island that shows the road going out to the old fort and some of the small children's swings are located there. Mr. Covington: That's all.

Cross Examination Q. (By Mr. Reinhart): Just one question Mr. Stevens. Would you say that Goodwin Park was a large or small park? A. I'd say it was a small park. Q. Can you give us an idea of what the dimensions might be? A. These dimensions are approximate but I would think it was about three hundred feet between Islington Street and State Street and about four hundred feet frontage on Islington Street. Q. To your knowledge has there ever been a permit issued to any organization to hold any meetings on Goodwin Park? A. Not— Mr. Covington: Hold on a minute now. We object to that because it calls for conclusion. The best evidence would be the records. We have asked the Clerk to produce them, they are in Court, and rather than to speculate, why there may have been meetings he didn't know anything about. Court: It is hearsay. Mr. Covington: Not material. Court: Witness testified he has nothing to do with granting permits for meetings. I think I will sustain it. Mr. Reinhart: That's all. Mr. Covington: That's all. Court: Do you have anything further? Mr. Reinhart: Nothing further.

Mr. Covington: Now then, I would like to conclude the examination of Mr. Derrickson, rather. I would like to begin and conclude it because he is ill.

Court: Yes.

ROBERT W. DERRICKSON. Sworn. Mr. Derrickson, defendant being duly sworn, testified as follows: Q. (By Mr. Covington): Will you please state your name? Please try to talk as loud as you can, Mr. Derrickson. A. My name is Robert Wesley Derrickson. Q. And what is your post office address, mailing address? A. Box 75, Portsmouth. Q. Where have you been living? A. I have been living in the back of Kingdom Hall. Q. That is the meeting place of Jehovah's witnesses? A. That's right. Q. Where was it that you were living, say, in 1950 when this transaction took place? A. I was living in the back of Kingdom Hall at 12 Ladd Street. Q. After that where did you move to? A. Well I lived there until I went into the hospital. Q. Now then, you are presently confined to the Portsmouth Hospital? A. Portsmouth Hospital, yes. Q. Now will you please tell us whether or not you have a serious ailment that will keep you confined there for some time according to the doctor? A. Yes, according to the doctors I have diabetes myelitis and hardening of the arteries, a bad kidney and a muscular heart ailment, that is, destructive hardening of the muscular part of the heart. Q. All right sir. And you are sitting there in the wheelchair, is that correct? A. Yes. Q. That's just for the record. You are a minister of Jehovah's witnesses? A. I am. Q. And your official position is and was at this time of this trouble in the park in Portsmouth presiding minister of the gospel? A. I was a servant and Q. And company servant means presiding minister? A. Presiding minister, yes. Q. You heard testimony of Mr. Poulos about the way the work was carried on? A. I did. Q. Is it the plan and policy of Jehovah's witnesses to hold outdoor public religious meetings in the public parks in the various towns and cities where congregations are located throughout the United States? A. It is part of the world-wide education campaign in the bible to hold outdoor meetings. Q. And that's usually during the warm months of the year, summer months? A. Warm months of the year, that's right. Q. Now in the month of May 1950 in accordance with that uniform policy of Jehovah's witnesses did you make an application to the City Council of the City of Portsmouth for permission to use

any one of their parks? A. I did. Q. When was the application made? Well, it was made in May, April or May. A. It was made in May I think. Q. And a hearing was had on that matter on May the 4th, 1950? A. On Tuesday. Q. Of the City Council in the City of Portsmouth? A. Yes. Q. Where did the hearing take place? A. In the Council Room upstairs. Q. You mean upstairs? A. In the, that is the City Hall and also the Police Station. Q. I show you Defendants' Exhibit J which is an agenda dated May 4th heretofore identified by the Clerk of the City of Portsmouth. Court: What is the number? That hasn't been marked. Mr. Covington: No, your Honor. Court: May be marked K. (Marked Defendants' Exhibit K) Q. (By Mr. Covington): Defendants' Exhibit K shows an agenda of business of the City Council of the City of Portsmouth on May 4th, 1950 on which is listed "petition to conduct public lectures in Goodwin Park, Jehovah's witnesses", showing that there had been a petition filed first with the City Council before May 4th that was to be determined on May 4th. Did you file a written printed petition? A. I did. Q. And in that written printed petition did you show the dates that you wanted to use parks? A. Yes, I listed the dates and the names of the parks, not the names of the parks, that is, Goodwin Park, but I listed the titles of the talks and the dates they would be given. Q. All right. And you listed one I believe as June the 26th, was it not, the day that you were to be here, talk, first talk of a series? A. That's right. Q. Then you listed one for July 2nd? A. That was Mr. Poulos's talk. Q. It was June 25th, wasn't it, 1950, is that right? A. That's right. Q. Then the second talk was July 2nd, 1950. Did you list Mr. Poulos's talk in that petition? A. Yes, I listed his talk in that petition. Court: Is the petition here? Q. (By Mr. Covington): You didn't have a copy of it, did you? A. No. Mr. Covington: Is the written petition available? Mr. Bellucci (City Clerk): I haven't it. Mr. Covington: It's not among those applications. All right. Q. Will you please tell us now the title of the two talks you listed? A. Mine was The Pathway to Peace and Mr. Poulos's talk was entitled "Preserving Godliness Amid World Delinquency". Q. In the application did you offer to pay the fee? A. Oh yes. I made particular mentions that I would pay any reasonable fee that would

be demanded and be glad to do so. *Court:* What did the petition say so far as you can remember it? *Witness:* The petition was for the use of Goodwin Park specifically, I mentioned Goodwin Park, and it was for the purpose of delivering bible lectures. *Q.* (By Mr. Covington): And now on May 4th, 1950 you appeared before the City Council in behalf of Jehovah's witnesses in this petition to use Goodwin Park on these two dates that you have mentioned, is that correct? *A.* Yes, that's true. *Q.* Would you please tell us what took place upon the occasion of your appearance before the City Council as best you can remember it? *A.* Yes. *Mr. Reinhart:* Your Honor, please, it seems to me that the record is the best evidence here. Council turned down, denied the permit. That's the result of the procedure. *Mr. Covington:* That may be— *Mr. Reinhart:* I don't think we ought to be obliged to listen to everything that might have transpired at a City Council meeting, at which there were other business or agenda. *Mr. Covington:* I am talking only about this application. May I answer that objection, your Honor, if he is finished? The purpose of this testimony is to show that there was arbitrary and capricious denial of the application and that upon the remarks made by members of the City Council it was a denial based on motives and grounds different from that permitted by law. And the only way that we can establish it is by oral testimony because we have copy of the minutes of City Council meeting of May 4th in reference to this application and it merely shows as follows: "A petition was read from Robert Wesley Derrickson, local group of Jehovah's witnesses asking for the use of Goodwin Park for a series of public lectures on bible topics. Mr. Derrickson spoke briefly as did Councilmen Simes, Leary, Patterson and Mullen. Upon motion of Councilman Simes the petition was denied". And we say that this man ought to be able to testify as to what he said and what the Councilmen said because there is no complete record of the matter of the hearing. There is a record only of the decision reached by the City Council and our purpose is to show arbitrary and capricious determination. *Court:* I am going to let him testify. *Mr. Covington:* All right, your Honor. *Q.* Now please tell us, Mr. Derrickson, what you said from the time this matter was called. Telling us first what was said when it was called, what you

said and what the various Councilmen said please. A. When it was called to the attention of the Council I stood up and began a formal address to the Council and— Q. When you say you began a formal address to the Council that's all right but the Judge may not know the subject matter of it, what you said, so tell the substance. You don't have to say the exact words. A. The substance. The— Q. The substance. A. The substance of my discussion was that I had the permission to use this opportunity to call to their attention the petition and to speak in behalf of it insofar as it pertained to us holding meetings there in Goodwin Park and I cited some United States Supreme Court decisions as to our use of various instruments of that kind to enable us to preach this message to the people and there was one Councilman there, Leary, he said, "I wonder what he is talking about", I cited the CIO and Schneider case and this Leary said "I wonder what he is talking about", and Councilman Simes said "Oh he is talking about some Supreme Court cases to which I shall presently answer". And then this Councilman Simes said that there was a time when he would be bound by the United States Court decisions but not now, and then the, I believe it was Councilman Simes spoke about the, he said, let me see, I want to get that straight, it was, oh yes, it was Councilman Simes that said, "This is the sovereign State of New Hampshire and when the government tells us to defend it I'll shoulder a musket". And then— Q. Was the man by the name of Mullen on the Council? A. Oh yes, there was Mullens, Mr. Mullens after I had finished with my telling them the reason for the use of the parks which was to inform the people of the good will of the Almighty God through the bible. He had ordained his purpose to set up a righteous government on earth and that it would bring peace, prosperity and happiness to all mankind. Then this Mr., Councilman Mullens, I said that I was finished and would anyone care to ask me questions and this Mr. Mullens said "If there were, if the City were attacked would you give that speech or would you defend it?" I immediately quoted a Bible scripture but in the hubub and commotion it was lost. Q. They could not hear because of the commotion? A. And they could not hear me, no, and I didn't know until after the whole thing had been finished and I had asked the Miss Foley I believe at the time was the

Clerk, Town Clerk, what the result was did I know whether our petition had been granted. Q. And what was the announcement made upon the petition? A. That it was denied. Q. Was there any statement made about whether they did allow religious meetings in any of the parks in the City of Portsmouth that you remember? A. Yes I believe there was one Councilman there that afterwards said struck the only sane word in the whole discussion, was that it was the policy of the City not to allow religious groups to use the parks. Q. Now then, tell us about your talk, Mr. Derrickson, that you gave. You went ahead, did you not, and gave a talk on the following 25th day of June? A. Following Sunday, yes. Q. The 25th and would be Sunday? A. It was the 25th day of June. Q. In this application to be determined on May 4th you had specified June 25 and July 2nd? A. That's right. Q. For Jehovah's witnesses? A. That's right. Q. The first one scheduled to be given was The Pathway to Peace? A. Right. Q. You told us you gave that talk? A. I gave that talk. Q. Tell us about going to the park and what occurred on that day. A. Well I went to the park about quarter to three for the talk was scheduled for three o'clock and I found a group there and I made preparation for the introduction of the talk, the Chairman was there and I gave him the introduction and at three o'clock I began my talk using, well, following the outline that there was a great lack of peace today in the world and the reason for that lack of peace and result of that lack of peace in my introduction. And then I showed them how peace was wrecked, the great peace wrecker, Satan, the devil in the garden of Eden and I pointed out the result of his leading the human race into pathways that lacked peace and then I showed how it was the purpose of Almighty God Jehovah to bring about a different system of things, a real enduring and lasting peace and that peace was to rest upon the shoulders of his beloved son Christ Jesus and the results that that great peace would bring to mankind was the promise of goodwill and mean everlasting life, health, peace, prosperity and endless joy for all of goodwill toward Jehovah God. And then in my conclusion, well I didn't get to the conclusion, that's right, this I felt a tap on my shoulder about then, in fact I was reading from the thirty-second chapter of Isaiah where it says "Behold

a king shall reign in righteousness and princes shall rule in judgment", and then I felt that tap on my shoulder and I turned and there was an officer of the law there who requested, he questioned me if I had a permit and I said no I hadn't a permit, "Well", he says, "you will have to stop". I says, "I can't stop, this is an important message", and I continued to address my audience and, well, he said, "If you don't stop I'll have to arrest you" and I said "Well that's your responsibility" and so I was taken, placed in the police car and taken down to the police headquarters, station, and booked and placed in a cell. Q. And prosecuted? A. Prosecuted. Q. In the Court below convicted and now you have appealed your case to this Court here, is that correct? A. That is true. Q. I show you a piece of paper that contains Chairman's introduction and ask you if that is what you typed out for the use of your Chairman to introduce you that day. A. Yes that is, this is what I typed out for the Chairman that day. Q. Please read that to the Judge to show what the Chairman said before you began to talk, which you have described? A. Yes. Chairman's introduction. Friends, fellow citizens. The Watch Tower Society that is sponsoring (I will have to get my glasses, pardon me a minute.) The Watch Tower Society which is sponsoring thousands of these public meetings welcome you. This is a message of peace, therefore it is a message of utmost public importance. You are living from day to day in an era that has witnessed two of the most disastrous wars of human history. Peace is desired by all reasonable and God-fearing persons. Because the convenience and use of weapons whose potential power to snuff out lives of millions is now an admitted fact, many have been the schemes brought forth to prevent war and to insure peace. One pathway, however, has been overlooked. It is now my privilege to introduce a representative of the Watch Tower Society who will speak on the Pathway to Peace. Q. All right. Thank you. Mr. Derrickson, at any time did either your Chairman or you in delivering the talk or addressing the audience that day use any language as a, that provoked a breach of the peace or incited people to fight? A. No there was not. Q. Was there any racket or disturbance in the park? A. No there was not. Q. And your audience was orderly, is that correct? A. Audience was orderly. Q. Was

there a peaceful assembly? A. Peaceful assembly. Q. Other people were not barred from the use of the park by your little group being there, was it? A. They were not. Q. Did anyone in the park that were outside of your audience come to you and object to your using the park? A. No they did not. *Mr. Covington*: All right, that's all, your Honor.

Cross Examination. Q. (By Mr. Reinhart): Mr. Derrickson, you have testified that you were asked one question by Councilman Mullen as to whether or not you would defend your country. Outside of that question that was asked you by a member of the Council were you asked any other questions by any other members of the Council? A. I cannot recall at the present. Q. But you do remember distinctly one of the members of the Council stating to you that the, it had been the policy of the Council not to issue permits to any religious organization. You do recall that? You just testified to it, haven't you? A. Yes. Q. Do you recall which member of the Council it was that issued, that made that statement? A. I can't remember the gentleman's name, no. I can't now. Q. You recall what part of the Council table he was sitting at? A. No I can't recall that either. *Mr. Reinhart*: That's all. *Mr. Covington*: That's all.

Mr. Covington: I might say this. If Mr. Derrickson is willing for the trial to proceed in his absence if the Court will allow him to return to the hospital. *Court*: Are you willing that we should go ahead? *Mr. Derrickson*: Oh yes. Q. (*By Mr. Covington*): You are willing for us to go ahead and proceed with this trial in your absence? A. Yes. Q. Under the law we can do it if you consent to it in this type of a case. A. Yes. Q. You have no objection? A. I have no objection. Q. Would you like to go back to the hospital? A. It's not particularly myself but if you direct me to. Q. We don't direct you but if you see no reason and desire to stay here we don't ask you to go. A. I'd just as soon stay. Q. All right. Is this too strenuous for you? A. No.

8
fendants, being duly sworn, testified as follows: Q. (By Mr. Cor-
ington): Will you please state your name? A. Thomas Francis
Mullen, Sr. Q. Mr. Mullen, what is your occupation? A. Sales-
man. Q. In connection with what organization? A. Port City Bev-
erage Company. Q. How long have you lived in the City of Ports-
mouth sir? A. About thirty odd years. Q. And of course you
have an official position with the City of Portsmouth, do you not? A.
An official position? Q. Yes? A. Elected Councilman, yes. Q.
Were you sitting on the City Council May 4th, 1950 when the matter
of application of Jehovah's witnesses came before the Council? A.
Yes sir. Q. Do you recall what took place on that day fairly clear-
ly? A. I do. This gentleman, Reverend gentleman that just spoke
had a petition read and I took the floor regarding the petition. I
learned from one of the brother Councilmen it was already on the
books which I did not know. Q. What do you mean, already on the
books? A. It was an ordinance passed, passed and recorded in the
City Council. Q. An ordinance had been voted? A. The Council-
men had voted their ordinance. Q. Requiring permits before peo-
ple could hold meetings? A. I believe that's right, yes sir. Q. Now
then, you knew this was an application for a permit addressed to the
City Council? A. Yes sir. Q. When the petition was called before
the Council who spoke first and begin with the first speaker and end
with the last one. A. That I don't recall. Q. All right. Just tell
us the substance of what you remember as it occurred being said there
and I'm not going to hold you to saying the exact words or putting
it in its exact order but try to get it somewhere close to the exact
order in which it occurred. A. I remember that I took the floor,
Judge Simes had taken the floor previous. Q. Who? A. Judge
Simes. Q. What did he say? A. I believe he made the statement
that the discussion is unnecessary due to the fact that ordinance was
already on the books and that at no time had the City Council ever
granted a privilege to any religious organization to use any of the
City property. Q. Any of the parks? A. That may not be verba-
tim but that is my recollection. Q. They didn't allow religious meet-
ings upon any City property? A. That they hadn't. Q. That they
hadn't? A. That they hadn't, I believe that is what Judge Simes

said. I took the floor and asked this gentleman, it would have had no ruling on my vote on the ordinance, asked him in case he was speaking in Goodwin Park or any City property if the City should have been attacked would he do anything to stop it. I don't remember using the word "fight". I meant by that would he do anything possible in his power to defend the City and I believe he quoted scripture, the verse I don't recall. I sat down immediately after his statement. Q. And of course his attitude and his statement angered members of the Council, didn't it? A. I won't say that. No I don't think there was any question of anger. I don't think the question was vital enough to cause— Q. Why was the question asked? A. I asked the question personally. Q. What for? A. Well it was my belief that in the United States, may I give my own interpretation? Q. Sure, go ahead. A. In this country when people are granted such liberties and such pursuit of happiness that I certainly believe, my own conviction, regardless of their religious belief which I honor any man whether he is with me or no, I'll give him credit for believing in God in any way he chooses as long as he believes in that God. I do firmly believe that any man or person in case of an attack should do something to help his home and his country who been attacked and that is the spirit that I can give for my statement. Nothing personally against him for his judgment. It had no feeling against the gentleman or his belief, that was my heartfelt feelings for that statement sir. Q. Well if it didn't have any bearing why did you bring it into the Council meeting sir? A. The only reason I brought it into the Council meeting because this gentleman was asking a motion of the City and I thought it was a fair question to ask him which I would ask any man of my own belief if he had been there. Q. You don't believe a person who won't defend his country by bearing arms should be out on any of the parks, is that right? A. I didn't mention anybody bearing arms. A man doesn't necessarily have to bear arms. Q. Do anything? A. I didn't include arms. As far as the word fight I don't remember. Q. It was your belief then that a man who would not do anything wasn't entitled to use the park, is that it? A. Why yes. That doesn't reflect the view of the Council. That's my own personal views. Q. Did that cause you to make the ruling

that you made in this case which was that he shouldn't have the use of any of the parks or was it because of the policy not to allow anybody's organization not to use any of the parks of the City of Portsmouth? A. I didn't make the ruling? Q. Didn't you vote on it? A. No I did not vote on the question. Despite what the record may say I waived the question myself. Q. The record shows that you voted. A. Well that might be but I don't recall it. I wouldn't have voted on it. Q. You would not have? A. I'd like to further that by saying that I think as far as discrimination goes that was very very remote from my mind. Q. So you did not vote on it? A. I didn't intend to vote on it. If I made a misstatement it is a misstatement. I weighed the question very heavily sir. I don't believe in denying any religious body any privilege. Q. Was this the first time that you ever learned that they did not allow religious groups to use any of the parks in the City of Portsmouth? A. No, I learned that night when the question was coming up that that way in the City of Portsmouth that in cooperation of this ordinance I have learned that City of Portsmouth never granted permission to any religious body to use any of its public parks. Q. For religious meetings? A. For religious meetings. Q. Or gatherings? A. What say? Q. Or gatherings? A. Or gatherings. Mr. Covington: Or gatherings. Was there anything else? That's all. Mr. Reinhart: No questions.

FRANK E. PATTERSON Sworn Mr. Patterson, called by defendants, being duly sworn, testified as follows: Q. (By Mr. Covington): Will you please state your full name and your address and your age and occupation? A. My name is Frank E. Patterson, 733 Middle Street, Portsmouth, my age is fifty-two, and my occupation is building contractor. Q. What official position, if any, do you have? A. City Council. Q. Where do you reside? A. 733 Middle Street. Q. Will you please tell us whether you were a member of the Council on May 4, 1950? A. I was, yes sir. Q. Were you present when the matter of the petition presented by Jehovah's witnesses to the Council for permission to use one of the city parks of Portsmouth for the holding of religious meetings on June 25 and

July 2nd, 1950 was considered by the Board? A. I was there yes. Q. Would you be kind enough to tell us what took place as best you recollect it from the time the petition was called to the time it was passed upon or voted upon? A. Well as I recall the petition was read by the Mayor and opened for discussion and I think that the, I believe Mr. Derrickson, is it? Q. Yes. A. I believe— Q. Derrickson. A. —rose and asked if he could be heard. He, I know that he continued to hold forth on what I call in my own mind irrelevant to the situation, sort of dragged out procedure. And eventually, I can't recall whether he was asked to stop or just what happened but I do know Councilman Simes made some remarks concerning the Supreme Court order. I recall Mr. Mullen's remarks that he just stated here. Q. Sir? A. I recall Mr. Mullen's remarks already stated. Q. Would you please repeat them? A. That he asked after Mr. Derrickson had talked, somebody asked, he rose and asked what he would do or if he would defend his city if he were attacked. Q. Did that have any— A. That brought forth more or less of a bible discussion and after that got around to voting and the vote was unanimous in denying the petition. Q. Why was it that you denied the petition? A. Because sir we have denied them previous meetings, we had already denied other religious groups and would not set a precedent by granting permission such as that to any religious group. Q. You say other religious organizations— A. We have, yes. Q. May I finish please? I'm sorry. A. Surely, I'm sorry. Q. Do you say other religious organizations have been denied the right to use any of the city parks for meetings? A. City parks and streets, yes. Q. City parks and streets— A. Yes. Q. —in the City of Portsmouth? A. Right. Q. What religious groups were there involved in those denials? A. I believe we have been requested, petition from Mormons, Adventists. Q. Seventh Day Adventists? A. Seventh Day Adventists, that was previous years, years previous to 1948 and '49, several others, I'm not sure, I think the Church of God and Christ have petitioned. We denied them. We denied other organizations. Q. Well now, it is a fact of course that religious organizations had never been granted permission to use any of the city parks, is that correct? A. To my knowledge that is right. Q. That isn't a written policy

or a written ordinance, but it is an unwritten policy of the City Council not to grant permits under the ordinance? A. I can't cite you the ordinance but probably a fact and— Q. You were not here this morning but the City Clerk who had that book of ordinances in his hand and which book is now before you shows only this one ordinance which I will call to your attention in reference to the use of the parks. It's article seven, section twenty-two which has been heretofore read into the record. He testified that that was the only ordinance on the books of the City of Portsmouth in reference to the use of parks. A. Apparently, yes that may be true. Q. Then— A. That may be true. Q. Then the policy not to grant permits to religious organizations is not written into any ordinance of Portsmouth but it is the policy of the Council not to allow them? A. I believe according to law it is up to the Council to grant any permit. It is up to the judgment of the Council. Q. If the Council wanted to grant permits to religious organizations it could for there is nothing in the ordinance to prohibit them? A. According to the ordinance, no. Q. That is the only ordinance, isn't it? A. I won't say so. Q. Assuming the Clerk's testimony to be true it is the only ordinance, isn't it? I'm not asking you to— A. I don't know. Q. Let's for the sake of argument assume what the Clerk said is true, that is the only ordinance, then there is nothing in that ordinance to prevent you and other members of the Council allowing any religious organization to use any of the parks? A. As far as reading— Q. Sir? A. That is right. Q. If you wanted to grant it to them you could, couldn't you? A. Oh yes. Q. It rests in the absolute discretion of the City Council to say whether a religious organization can or cannot use the parks? A. That's right, yes. Q. And this policy that you testified to applies to every one of the parks in the City of Portsmouth, doesn't it sir? A. Yes I would assume so. Q. And it's not limited to any one particular park, is it? A. No. Q. It applies to all of them? A. As far as I know. Q. Well now, can you explain to the Judge why it is that the City of Portsmouth has this policy to deny religious organizations, that discretion of the Council, permission to use any of the public parks in Portsmouth? A. Can I describe the only reason— Q. You may. A. My reason would be sir, that once we set

a precedent we would be pestered almost continuously by other organizations, my experience in the Council perhaps four years, we have various organizations from out of town petition for tag days for various things which they would have us continuously in hot water over it. Matter of setting up the precedent and the only reason for voting against it would be it would not set a precedent giving one organization and another presented a similar request, and as I say, we would be continuously, we could not deny any, in order to deny all or any of them we had to deny all. Q. In other words, you haven't got an ordinance on that book that makes it mandatory and the way you Councilmen interpret that law, there's nothing in that ordinance there that would compel you to give a religious organization a permit, is there? A. I have already stated. Q. I am asking it again. A. Again yes, nothing. Q. There is nothing in that ordinance according to the interpretation you have placed that would compel the City Council to give a permit to any religious organization to use any of the parks. That's right? A. That's right. Q. In the exercise of your discretion in the enforcement of that law you have adopted the unwritten policy not to allow any religious organization to use the parks for if you allow one you must allow all? A. That is correct. Q. That is the only reason? A. That is my reason. Q. And that apparently could be one of the other reasons of the other Councilmen, couldn't it? A. I speak for myself only. Mr. Covington: All right, you speak for yourself. That's all.

Cross Examination Q. (By Mr. Reinhart): Councilman Patterson, was this meeting in question at which the vote was taken on the Derrickson matter an orderly conducted meeting? A. Oh yes. Q. Was it conducted in a dignified manner? A. That's right. Q. Whether or not it is a matter of right in Council meetings to call upon a petitioner to express his views or whether it is just a matter of courtesy? A. It is a matter of courtesy. Q. Whether or not that courtesy was extended to Mr. Derrickson at this meeting? A. It was extended but I don't recall whether it was by request of Mr. Derrickson or by the request by the Mayor asking Mr. Derrickson. Q. He was given the privilege? A. He was given the privilege to

speaking one way or another. Q. Although that was not required as a matter— A. No that is not required, matter of courtesy. Q. Whether or not your vote in this matter was influenced in any way by any remarks that might have been made by Councilman Mullen or other members of the Council? A. No. It's automatic, goes through, as I say, I only used my own vote only because I didn't want to set a precedent. That is my reason. Mr. Reinhart: No further questions. Mr. Covington: That's all sir.

(Short recess)

LESTER R. WHITAKER, M. D. Sworn Dr. Whitaker, called by defendants, being duly sworn, testified as follows: Q. (By Mr. Covington): Will you please, doctor, state your full name, your profession? A. Lester R. Whitaker, physician. Q. And your address? A. Address— Q. Business address and home address. A. My business address, 97 Chestnut Street, Portsmouth. My home address, Brackett Road, Portsmouth. Q. What official position, if any, do you enjoy with the City of Portsmouth? A. You ask me, you use the word "enjoy". Q. Or do you have? A. City Councilman of Portsmouth. Q. Were you on the City Council on May 4, 1950? A. I was. Q. And you of course having been in the courtroom this afternoon and having heard the testimony know that this involves the application made by Mr. Derrickson in behalf of Jehovah's witnesses to hold religious meetings in one of the parks in Portsmouth, you know that? A. I do. Q. You recall the application, do you? A. I do. Q. Will you please tell us what occurred from the time the petition was called for consideration until such time as it was ruled on? Giving us the substance of what you remember was said either by you or any of the other persons in your hearing? A. The petition was read by the Mayor, there was discussion and as I remember it the discussion was as has been presented here, I can't remember any— Q. —Thing to the contrary? A. Anything to the contrary. Q. Now is there anything that you might add, Dr. Whitaker? A. I don't understand your question. Q. Well I mean is there anything in addition to what has been said that you would like to add or can add? A. No, I think that Council-

man Patterson's statement that that had been the policy of the City Council to grant no permits for religious organizations to hold meetings on city property— Q. And of course that would mean any of the parks in the City of Portsmouth, is that correct? A. Yes. Q. In other words, the City of Portsmouth has not taken from among its public parks any one park and said religious meetings could be held here and not over here, they just deny them to all, is that right? A. As I understand it that is right. Q. And the reason is probably — A. But I would like to add there that I don't remember that request had been made for other parks. Q. All right. But you do remember the testimony that Mr. Patterson gave us about other organizations having been denied it the year before and the year before that? A. Yes. Q. The Seventh Day Adventists and some other religious organizations? A. I don't remember the Seventh Day Adventists. I remember the Mormon. Q. The Church of God and Christ? A. And I remember that, the Church of God and Christ. Q. Now the petitions have never been denied because there is some particular park designated for religious meetings in Portsmouth but because it is the policy of the Council not to allow any religious meetings and speeches on any of the city park property, is that right? A. Any of the city properties, streets or parks. Q. And as stated, there is nothing written in the ordinances of the City of Portsmouth but that is an unwritten policy that is adhered to by the City Council, is that correct? A. That is as I understand it. Q. An unwritten policy. The only thing that's written is that particular ordinance there, is that correct, which has heretofore been referred to as the one authorizing the City Council to grant permits or reject them, being section seven, section twenty-two and twenty-three and twenty-four and twenty-five of the ordinances of the City of Portsmouth. A. Now your question? Q. The question is this, doctor. The Clerk has testified that's the only ordinance on this subject in the ordinance book. A. Yes. Q. And the question I put to you, this policy of refusing permits to all religious organizations is, as you stated it, a matter of unwritten policy rather than anything that's written to be found in the ordinance book, isn't it? A. That's true. Q. And it comes about as the result of the exercise of the discretion that is invested by that

ordinance there in the City Council, is that correct? A. I'm not sure that it's limited by that ordinance. Q. I'm not saying it is limited but that is the only ordinance. There is, we will all admit that the Council has certain discretion, don't they? A. Yes but the Council is given the discretion by some law I believe. Q. Well that is the law. A. I believe it is some law beyond that. Q. And, well the statutes of New Hampshire authorize that law, you understand that? A. Yes. Q. And that is really the law which is the New Hampshire statute but this is a local city law enacted by virtue of the State statute. You understand that? A. Yes I do. Q. Now then, the point I am getting at is the denial is in the discretion of the City Council, isn't it? A. Yes. Q. In other words, there is no written law that says that any religious organization can use any of the parks, is that right? In other words, the ordinance doesn't provide for religious use of parks, does it? A. That's right. *Mr. Covington:* That's all, doctor. *Mr. Reinhart:* That's all. *Mr. Covington:* You may be excused as well as the other gentlemen I called if you care to. Those who want to go who have been called to the stand.

Mr. Covington: Is Councilman Butler here?

THEODORE R. BUTLER Sworn Mr. Butler, called by defendants, being duly sworn, testified as follows: Q. (*By Mr. Covington:*) Please state your name? A. Theodore R. Butler. Q. And your address? A. Home address, 973 State Street, Portsmouth, New Hampshire. Q. Your business address? A. 17 Daniel Street, Portsmouth, New Hampshire. Q. Your occupation? A. Insurance and real estate agent. Q. What official position, if any, do you have with the City of Portsmouth? A. Member of the City Council. Q. And were you such a member on May 4th, 1950? A. Yes sir. Q. You remember the Jehovah's witnesses petition for permission to have religious meetings in one of the parks? A. I do. Q. You have heard the testimony of the other gentlemen? A. I have. Q. Is there anything that you would like to add or take from what they have said? A. No, I think they have been rather accurate in their description of it. Q. Your testimony would be the same, is that correct? A. Yes sir. Q. For the reason of denial of the petition, is that correct sir? Namely—

A. Yes, I understand. Q. That it is the policy of Portsmouth not to allow religious meetings on any of their city properties? A. That is correct, yes sir. Q. Just for the sake of the record, subpoenas have been issued to Mr. Neal and Mr. Simes. They are ill and cannot attend, is that correct? A. I do not know. Q. Mr. Neal is out of town and Mr. Simes is sick? A. I do not know. *Mr. Covington:* Can we not so stipulate? *Mr. Reinhart:* Yes that is correct. *Mr. Covington:* All right, that is all. *Court:* Have you any questions? *Mr. Reinhart:* No questions.

JOHN J. LEARY Sworn Mr. Leary, called by defendants, being duly sworn, testified as follows: Q. (*By Mr. Covington*): Will you state your full name and your address and your occupation? A. John J. Leary. Grocery store owner and manager. Q. Where? A. Portsmouth. Q. And what position do you have with the City of Portsmouth? A. A member of the City Council, also member of the State Legislature. Q. Do you live in Portsmouth? A. I do. Q. Were you on the Council May 4th, 1950? A. I was. Q. You have heard testimony of the other gentlemen given about the denial of the Jehovah's witnesses application for permit to use one of the city parks for a religious meeting. You heard that? A. I did. Q. Would your testimony be the same as theirs if you were questioned? A. It would. Q. And your reason of course for the denial is the fact that it has been the policy of the City of Portsmouth to deny all religious organizations permits to use any of the public parks in the City, is that right? A. That's right. *Mr. Covington:* That's all.

RICHMAN S. MARGESON Sworn Mr. Margeson, called by defendants, being duly sworn, testified as follows: Q. (*By Mr. Covington*): Mayor Margeson, will you please state your full name and your address and your business occupation? A. Richman S. Margeson, 64 Vaughan Street, retail furniture. Q. And are you residing and do you have your business in the City of Portsmouth, New Hampshire? A. I do. Q. You have heard the testimony of the other gentlemen on the Council and in reference to the denial of the application made by Jehovah's witnesses for permission to use one of the

City parks of Portsmouth for a religious meeting. You heard that testimony, did you? A. I did. Q. Would your testimony be substantially the same if asked the same questions? A. Substantially the same, yes sir. Q. And the reason for the denial of the application so far as the City Council was concerned is because of the unwritten policy that exists in the City Council against allowing any religious organization to any use of any of the City parks for religious meetings, is that correct? A. That's correct. *Mr. Covington:* That's all. *Court:* If it was the policy, these meetings were restricted at all parks? *Witness:* All parks and all streets. *Court:* All right.

Cross Examination Q. (By Mr. Reinhart): For the purpose of the record, you are the Mayor of the City of Portsmouth? A. I am. Q. And you presided as Mayor as the presiding officer of the Council meeting held on the day this petition was presented? A. I did. Q. Whether or not it was you who extended the privilege to Mr. Derrickson to address the Council? A. I did. Q. And whether or not it was you who announced the policy of the Council regarding the policy of the City with respect to granting of permits to religious organizations? A. That is my recollection. Q. Was that announced before the vote was taken? A. I believe that was announced before the, Mr. Derrickson, or after Mr. Derrickson concluded his appeal to the Council. Q. As far as you know had any other petition ever been granted to any religious organization in the City of Portsmouth to conduct religious meetings in any public park? A. There have been none granted to my knowledge. Q. Have there been some asked for and denied? A. Yes there have. *Court:* What is the procedure at Council meetings in matters of this kind? *Witness:* In regard to procedure that is generally followed at Council meetings, normally the petitions are read by the Chair and then a motion is made by one of the Councilmen and is seconded before the discussion takes place. And in this it is my recollection or it is my belief that this motion was to the effect that the petition be denied and then thereupon it was seconded and thereafter there was a discussion and it was during the discussion period that Mr. Derrickson

had an opportunity to address the Council. *Mr. Covington*: That's all.

Q. (By Mr. Reinhart): Whether or not there was other business on the agenda for that meeting? *A.* There was other business on the agenda for that meeting. *Q.* In other words, this was not the only matter of business that came before the Council at that particular meeting? *A.* That's right. *Q.* Could you give us some idea of the number of other items that appeared on that agenda, more than one or were there several? *A.* Normally there are anywhere from twelve to fifteen petitions. *Mr. Reinhart*: I believe the agenda is in evidence, your Honor. *Court*: Yes. Already appeared in Defendants' Exhibit K.

Redirect Examination Q. (By Mr. Covington): Just a moment, Mayor, I have in my hand a true copy of the minutes of City Council meeting of May 4, 1950. "Present, Mayor Margeson, Councilmen Butler, Whitaker, Neal Simes, Leary, Patterson, Mullen. Absent, Councilman Noyes. Applications and petitions. A petition was read from Robert Wesley Derrickson, local group of Jehovah's witnesses, asking for the use of Goodwin Park for a series of public lectures on bible topics. Mr. Derrickson spoke briefly as did Councilmen Simes, Leary, Patterson, Mullen". And then it says, "Upon motion of Councilman Simes the petition was denied". Is this a correct statement of the way the thing occurred? *A.* Of course when I said our usual procedure, that is our usual procedure, but I have no knowledge that this written word is contrary to fact. *Q.* Mayor, don't you know that the ordinary, customary parliamentary practice is to have a discussion before there is a vote? *A.* Normally, however, we did, we followed the custom of having a motion and then seconded and then having discussion. *Court*: You had discussion after the motion and the motion was seconded, then you had the discussion, is that the way it was? That is what your usual procedure is? *Witness*: Well our usual procedure is to have a motion and have it seconded and then have a discussion period. *Q. (By Mr. Covington)*: And then the voting comes? *A.* And then the voting comes after. *Q.* That is the way it

was here apparently? A. Yes. Q. No it's not. It shows the petition read and then a discussion and then it says "Upon motion of Councilman Simes the petition was denied". So to that extent it may be incorrect, is that it? A. I would not say the written record is incorrect but I would just say the normal procedure that we followed was as I outlined. *Mr. Covington:* That's all, Mayor, thank you very much sir.

Mr. Covington: At this time the respondents offer into evidence Exhibit L, being an abstract of a deed to Goodwin Park conveyed to the City of Portsmouth in 1887. (Marked Defendants' Exhibit L)

Mr. Covington: Next we offer into evidence Exhibit number M which is an abstract of the deed to Langdon Park deeded to the City of Portsmouth in 1867. (Marked Defendants' Exhibit M)

Mr. Covington: Next we offer in evidence Defendants' Exhibit N, Respondent Exhibit N, being an abstract of the deed to Plain Memorial Park deeded to the City of Portsmouth in 1811. (Marked Defendants' Exhibit N)

Mr. Covington: We next offer into evidence Defendants' Exhibit O, being an abstract of the deed to Prescott Park deeded to the City of Portsmouth in 1940. (Marked Defendants' Exhibit O)

Mr. Covington: We next offer into evidence Defendants' Exhibit P, being an abstract of the deed to Haven Park deeded to the City of Portsmouth in 1899. (Marked Defendants' Exhibit P)

Mr. Covington: We next offer in evidence Exhibit Q being an abstract of deed to the Liberty Park the year 1924. (Marked Defendants' Exhibit Q) We next offer in evidence an abstract of the deed to Hislop Park deeded to the City of Portsmouth in the year 1928. (Marked Defendants' Exhibit R) The next exhibit is S, being an abstract of the deed from Carter to the City of Portsmouth covering the children's playground park identified by one of the witnesses heretofore. (Marked Defendants' Exhibit S)

AMERICO J. BELLUCCI Mr. Bellucci, called by defendants, having been previously sworn, testified as follows: Q. (By Mr. Covington)

Will you please state whether or not you have examined your records to determine whether or not any permits have ever been granted to any organization to hold meetings? A. I have examined some of them, yes. Q. Of '48? A. 1948 and '49. Q. Now have you found any permits for any political meetings of any kind? A. Any political meetings no I believe. Q. Any sort of meetings of any kind? A. I beg your pardon on that. If you want to call a parade for a rally for a man that was running for some office in the State there was a petition for that. Q. For a candidate for office to have a parade advertising his candidacy and meeting, is that right? A. Right. Q. Did you find any records of any application for permits to make use of any of the parks for religious meetings of any kind? A. Not for use of the parks. Q. For what? A. These copies of permits that were issued I believe to the Church of God and Christ to do social work. Q. Social work from door to door or in the streets? A. Well it isn't stated that specific. I will read it? Q. Yes. A. Be It Known that Alman A. Diggs of the Church of God and Christ having complied with all the requirements of the City Council of the City of Portsmouth is hereby licensed to hold evangelistic services but not in public streets and permission to do social work in the City of Portsmouth until and including the 31st day of December 1949. Q. Any other? A. This reads the same way. You want me to read that? Q. Please. A. Be It Known that Alman A. Diggs of the Church of God and Christ having complied with all the requirements of the City Council of the City of Portsmouth is hereby licensed to hold evangelistic services but not on public streets and to do social work in the City of Portsmouth until and including the 31st day of December 1950. Q. Next. A. There is the third here and the last one which I found. This is the stub of the permit. Q. Same type of permit? A. Same type of permit and it expires, there has been an error here, it says December 13th, 1951 but it should say December 31st, 1951. Q. All right. Now then, that particular, those particular licenses to do evangelistic work in the City of Portsmouth did not, were not issued for the holding of a meeting in any of the public parks, is that it? A. Probably not. Q. No. Court: Your records, your last record you mean 1950? Mr. Covington: Your Honor, as I understood it 1950;

including December 31st, 1951. *Court*: Oh, I understand. Q. (By *Mr. Covington*): So as far as your search of the records reveals it corroborates the testimony of the Councilmen in regard to this policy denying all religious organizations to make use of the parks, that is to say, you have found no record of any permit given to any religious organization to have religious meetings in any park of Portsmouth, is that correct? A. I would say yes. *Mr. Covington*: That's all.

Cross Examination Q. (By *Mr. Reinhart*): And that one petition there was also denied as far as the use of streets is concerned? A. Yes. It so stated.

Mr. Covington: That's all, may it please the Court and we have in evidence I believe all our exhibits, we have marked them, first which is A and the last exhibit is T, isn't it? S. With that the defendants or the respondents rest.

And for the purposes of this case we now move that both cases be consolidated and that they be treated as one case for the purpose of trial as well as for the purpose of decision and judgment so as to avoid the necessity of having two records in the event it becomes necessary.

Court: Well of course they have been tried together.

Mr. Covington: They have been tried together here in Court.

Court: Do you care—

Mr. Covington: We make a motion.

Court: —care to submit briefs?

Mr. Covington: Your Honor, I would like to make my motion.

Court: Go ahead.

Mr. Covington: I ask permission of the Court to file with the Clerk of this Court the following motion to dismiss which I will read into the record for the stenographer's benefit which we desire to have included in the stenographic report as well as the official record of the Court, The State of New Hampshire, Rockingham SS, October Term 1951, Superior Court, State vs Robert W. Derricksen, respondent, State vs William Poulos, respondent. May it please the Court, now come the above respondents and move the Court to find the

defendants not guilty, enter a judgment of acquittal and dismiss the prosecution for the following reasons: 1. The undisputed evidence shows that the members of the City Council and the City Council itself acted arbitrarily, capriciously and without support of law and of fact when they denied the application made by Jehovah's witnesses in behalf of the defendants to deliver the public talks upon the occasions in question. 2. The undisputed evidence shows that the park in question is a public park dedicated as such without any limitations in the deed of dedication or in the ordinances of the City of Portsmouth and the defendants had the legal right to deliver the talks in the park and it was the duty of the City Council to issue to the defendants permits to use the public park in question for public meetings and public talks. 3. If the ordinance is construed and applied so as to justify convictions of the defendants under the facts in this case then the ordinance is unconstitutional as construed and applied because it abridges the rights of the defendants to freedom of assembly, freedom of speech and freedom of worship contrary to the Bill of Rights of the New Hampshire Constitution and the first and fourteenth amendments to the Constitution of the United States. Wherefore, the defendants, that is, respondents pray for the above order. Signed by Henry M. Fuller and I will put my signature on it, Hayden C. Covington, attorneys for the defendants.

And that, your Honor, is the opinion which we all are familiar with that has been rendered by the Supreme Court of New Hampshire in this case and I shall not discuss it at length because it is unnecessary. I merely say that it was an opinion that was rendered on a tentative state of facts agreed to in view of the motion to dismiss that was filed in the Court raising the constitutional question or questions. The basis of the decision was that this ordinance had been construed in the same way that the State statute was interpreted by the Supreme Court of New Hampshire in the Cox case. Judge Allen of the Supreme Court in that case held that it was mandatory that the permit be issued upon the payment of the fee required and that there was no discretion vested to refuse it providing that the expense of policing the parade was paid for.

The Court in this case in answer to the certified questions held

that this ordinance was identical and that they would place the same interpretation upon it and the Court went outside of the stipulation of fact and referred to certain publications of the City of Portsmouth in reference to the use of its parks and from these publications, which we say in no way support the conclusion reached by the Court, the Court concludes and states as a fact that the City of Portsmouth had the right to and apparently did have a policy of excluding religious organizations from one of its particular group of parks which as we have heard the testimony in this case we find not to be true. That is an error on the part of the Supreme Court in so assuming and from the testimony that we heard here from the City Councilmen and from Mr. Derrickson who appeared before the City Council it appears that unlimited discretion was vested in the City Council and that instead of this case being within the rule of Cox vs. New Hampshire referred to by the Supreme Court of New Hampshire in the answer to the certified questions in this case the case is squarely within the rule of law laid down recently in the Supreme Court of the United States in the Niemotko vs. Maryland case and also in earlier decisions referred to in that case. So instead of finding that this case is distinguished from the Maryland case and the cases there cited we find it in point with that case and that it is distinguishable from the construction placed upon the Cox case. The Cox case can be distinguished from the facts in this case in that there was no application for permit at all made in the Cox case for the holding of a parade. There was no opportunity for the exercise of discretion and the carrying out of mandatory requirements to issue the permit. And notwithstanding the fact that we have certified questions in this case that would apparently lead the Court to the conclusion that a judgment of guilty should be entered in this case, we find that there is every reason to conclude that a judgment of acquittal ought to be entered.

Now briefly that's our position (Do you have anything else? Now, your Honor, we are in a position to file briefs in this case if the Court so desires. I do not urge that the Court take briefs. On the other hand we would be quite happy to supply the Court with briefs if in view of the developments in the record made in this case the

Court is of the opinion that there are substantial questions involved that ought to be dug into more deeply.

Court: The evidence as it develops has developed somewhat differently than the statement of facts submitted.

Mr. Covington: That's right.

Court: I think I will require briefs.

Mr. Covington: Would you give us some time?

Court: I will give you one week and I will give the other side a week following.

Mr. Covington: We would be happy to do so. A week from today.

Court: Yes.

Mr. Covington: Thank you. May we submit the motion with the Clerk?

STIPULATION

It is hereby stipulated that subsequent to the judgment rendered in this case, the respondent Robert W. Derrickson has died.
Dated January 31, 1952.

ARTHUR J. REINHART
City Solicitor

HAYDEN C. COVINGTON
Attorney for Respondents

[fol. 60] IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

No. 4113

STATE v. WILLIAM POULOS & a.

Rockingham, April 26, 1952.

OPINION AS MODIFIED—JUNE 3, 1952

Appeals, from the municipal court of Portsmouth. In that court on complaints the two defendants were found guilty of conducting on specified dates without being licensed open air public meetings in Goodwin Park, which abuts Islington Street in the city of Portsmouth. These are the same cases that were transferred by the Superior Court in advance of trial on an agreed stipulation of the facts, and that were reported in 97 N. H. 91. The controlling ordinance is found in chapter 24, article 7 of the ordinances of the city of Portsmouth. It is given in full in the report of the previous transfer.

The two complaints were tried jointly and *de novo* in the Superior Court following the opinion of this court, which opinion held that the ordinance was constitutional as therein stated. The right to jury was waived. It is conceded by the defense that many of the facts, including the lack of licenses, established by the testimony are substantially the same as those stipulated for use at the former transfer. The Court returned verdicts of guilty and filed findings and rulings as follows:

"These cases are appeals from the Portsmouth Municipal Court. The complaints charge the respondents with the violation of Chapter 24, Article 7, section 22, of the Municipal Ordinances of the City of Portsmouth, Section 22 reads as follows:

"Sec. 22. License Required. No theatrical or dramatic representation shall be performed or exhibited and no parade or procession upon any public street or way, and [fol. 61] no open-air public meeting upon any ground abutting thereon shall be permitted unless a license therefor shall first be obtained from the city council."

"The respondents admit violations of the ordinance but take the position that the refusal of the Portsmouth City Council to issue licenses to them to speak on religious topics in Goodwin Park, a public park in Portsmouth, was arbitrary and unreasonable and that their constitutional rights of freedom of assembly, freedom of speech and freedom of worship have been violated contrary to the Bill of Rights of the New Hampshire Constitution and the First and Fourteenth Amendments to the Constitution of the United States.

"The constitutionality of the statute, Revised Laws, Chapter 174, sections 2 and 4 by virtue of which the city ordinance was enacted, was settled in the Supreme Court of the United States in *Cox v. New Hampshire*, 312 U. S. 569, and cannot now be questioned in these proceedings.

"Counsel have tried these cases on the theory that the refusal of the City Council to grant licenses to the respondents was in issue. It is found as a fact that the action of the City Council in refusing to grant licenses to the respondents was arbitrary and unreasonable, but the Court rules as a matter of law that this issue is not properly before it in these proceedings.

"The respondents could have raised the question of their right to licenses to speak in Goodwin Park by proper civil proceedings in this Court, but they chose to deliberately violate the ordinance.

"Verdict of guilty against both respondents."

The Court imposed a fine of \$20 on each defendant. [fol. 62] Exceptions were duly taken to the verdicts and the rulings of the court and a bill of exceptions was allowed both defendants by *Wescott, J.*

It is suggested that since the trial in the Superior Court the defendant Derrickson has died.

Gordon M. Tiffany, Attorney General, and *Arthur J. Reinhart*, city solicitor, for the State.

Hayden C. Covington (of New York) and *Henry M. Fuller* (*Mr. Covington orally*), for the defendants.

JOHNSTON, C. J. / Since the defendant Derrickson has died pending his appeal, the appeal on his behalf is abated. 24 C. J. S. 381, and cases cited; 96 A.L.R. 1317, 1322.

The Trial Court found that the city council in refusing to grant licenses to the defendants acted arbitrarily and unreasonably. The latter had offered to pay any reasonable fees customarily paid for the use of the park as well as any expenses incurred by the city in permitting the holding of the requested meetings. However, if the Court was correct that the remedy for such wrongful conduct was in appropriate civil proceedings and not in holding open air meetings in violation of the ordinance, the exceptions of the surviving defendant should be overruled. According to the Court, the defendants misconceived their remedy. It has been conceded by the defense on this transfer, as well as on the first one, that the ordinance is valid on its face. It is identical in language with the statute that was construed as valid in *State v. Cox*, 91 N. H. 137; which was affirmed in *Cox v. New Hampshire*, 312 U. S. 569. It is not disputed that the ordinance applies to the park that was the scene [fol. 63] of the open air meetings in question. No objection has been made to the application of the ordinance to the areas where the meetings took place, and no exception taken to any finding or ruling with respect thereto.

We see no reason for overruling the law as stated in this jurisdiction that a wrongful refusal to license is not a bar to a prosecution for acting without a license. "A wrongful refusal of a license is not equivalent to a license. Instead of prosecuting by proper proceedings his claim of right to a license, the defendant chose to disregard the law and must submit to the penalty." *State v. Stevens*, 78 N. H. 268, 270. It should be noted that the statutory provision for a penalty in case of a sale by an unlicensed person was held valid, even if a clause of another section with respect to a requirement of residence should be found invalid. This case clearly set forth the procedure to be followed in New Hampshire by one who has wrongfully been denied a license. What was there stated on page 270 applies to the present case. "The defendant had an ample remedy in the writ of certiorari."

The Yale Law Journal in an article on "Res Judicata," v. 49, p. 1266 asserts as follows: "The action of state licensing agencies has uniformly been held to be conclusive against collateral attack. . . . No distinction has been

made between errors of fact or of law in the mistaken refusal to grant the license. The same result has been reached even where the denial of a license was based on an unconstitutional section of a statute, provided that the entire statute was not thereby rendered invalid." The writer also cites *State v. Stevens*, *supra*, as authority. See also, *Phoenix Carpet Co. v. State*, 118 Ala. 143.

[fol. 64] The New Hampshire case of *State v. Stevens*, *supra*, has been cited as authority in the Massachusetts case of *Malden v. Flynn*, 318 Mass. 276. On pages 280 and 281 the court there stated: "The invalidity of the rule of the board of health, however, gives the defendant no right to transport garbage through the streets of Malden without a permit in violation of s. 31A. *Commonwealth v. Blackington*, 24 Pick. 352; *Commonwealth v. McCarthy*, 225 Mass. 192; *Commonwealth v. Gardner*, 241 Mass. 86; *State v. Orr*, 68 Conn. 101; *State v. Stevens*, 78 N. H. 268. The defendant was entitled to have his application for a permit considered fairly and impartially by the board and might have maintained a petition for mandamus if the board refused to consider it,"

The same principle of law is clearly stated in *Lipkin v. Duffy*, 118 N. J. L. 84, the headnote of which is as follows: "The provision of an ordinance that a license to carry on the business of conducting a junk yard should not be issued to a non-resident is unreasonable and discriminatory, but the remedy is by *mandamus* to compel consideration of the application for a license and not by the conduct of such business in violation of the valid portions of the ordinance without any license whatever."

While 33 Am. Jur. 395 in the article on "Licenses" takes the position that the cases are not unanimous, it uses *State v. Stevens*, *supra*, in support of the following: "According to other cases, however, when a license is refused by the licensing officer, although the applicant has done all that is necessary to entitle him thereto, he has no right to proceed to do the act for which the license is required." 53 C. J. S. 727, in its article on "Licenses" discusses the subject of defenses to criminal proceedings for violation of license [fol. 65] laws. The following is stated: "The fact that accused had applied for the requisite license; tendered the

fee, and had been refused a license constitutes no defense to a criminal prosecution for acting without a license unless the license authorities declined to issue a license on the ground that none was required; and it is likewise no defense to show that an application for a license would have been unavailing." As authority for the first proposition, *Commonwealth v. McCarthy*, 225 Mass. 192, which was referred to in *Malden v. Flynn*, *supra*, is used.

The defense relies heavily on the case of *Cantwell v. Connecticut*, 310 U. S. 296, for the proposition that the availability of the writ of *mandamus* under Connecticut law to review the action of the administrative officer in refusing a permit was not sufficient to preclude the court from considering the constitutional defenses. It must be noted, however, that in that case the entire licensing statute was held invalid as it was applied to persons engaged in distributing literature purporting to be religious and soliciting contributions to be used for the publication of such literature. The situation is different from that referred to in the *Yale Law Journal*, *supra*, and in *State v. Stevens*, *supra*, where the entire statute is not rendered invalid, so that convictions may be had under valid portions. Again we call attention to the fact that in this jurisdiction if a licensing statute is constitutional and applies to those seeking a license, the remedy here provided consists of proceedings against the licensing authority that has wrongfully denied the license. The substantial rights of the defendants to licenses are not here refused, but the manner in which they may be exercised must be defined in the licensing proceedings originating before the Council. Their remedy was against the City Council of Portsmouth but they chose not to follow it.

[fol. 66] Similarly, it was held in *Hague v. C. I. O.*, 307 U. S. 496, that municipal officers could be enjoined from action under certain ordinances that violated the constitutional rights of free speech and of assembly. Permits had been refused for public meetings, but, unlike the case at bar, the prosecutions were contemplated under ordinances that were invalid. "We think the court below was right in holding the ordinance quoted in note 1 [relating to public meetings] void upon its face." p. 516. Concerning the

ordinance dealing with the distribution of printed matter, the court said at page 518: "The ordinance absolutely prohibiting such distribution is void under our decision in *Lovell v. Griffin, supra*, and petitioners so concede."

In *Estep v. United States*, 327 U. S. 114, the court decided that in a proceeding for a violation of the Selective Training and Service Act of 1940 a defendant could show that the order of the local board exceeded the jurisdiction of the board since he had exhausted his administrative remedies. The board had wrongfully denied the defendant an exemption as a minister of religion. It was not necessary to comply with the order and then resort to *habeas corpus* to complete the civil remedies. *Gibson v. United States*, 329 U. S. 338, was similar in its facts and holding. In the case before us the defendant Poulos has not taken advantage of an available and proper remedy against the licensing authority. Moreover, he has been prosecuted under a valid ordinance which requires a license before open air public meetings may be held. The State's case was complete upon showing the conduct and the absence of the license. The valid ordinance then governed. It was not necessary for the State to show the rightful denial of the license. In the *Estep* and *Gibson* cases, it was essential for the government [fols. 67-68] to establish the orders of the local boards before it could convict for failure to comply with those orders. These two last mentioned cases are similar to the prosecutions for failure to comply with orders of quarantine issued by health officers cited in the brief for the defense. In such case the order and its validity, if questioned, must be established by the prosecution.

The remedy of the defendant Poulos for any arbitrary and unreasonable conduct of the city council was accordingly in *certiorari* or other appropriate civil proceedings. *American Motorists Ins. Co. v. Garage*, 86 N. H. 362, 368.

State v. Derrickson abated; exceptions of defendant Poulos overruled.

All concurred.

[Title omitted]

MOTION FOR REHEARING

May It Please the Court:

Now comes the defendant, William Poulos, within ten days from the date of notice of the decision rendered by this Court, and moves the Court for a rehearing in this case on the following grounds:

I

The Court has improperly construed and applied the doctrine of *State v. Stevens*, 78 N. H. 268, so as to deny to defendant his right to contend that the ordinance, as construed and applied, is unconstitutional under the federal Constitution, which construction is unreasonable and raises "a succession of constitutional doubts as to such interpretation". (*Harriman v. Interstate Commerce Commission*, 211 U. S. 407, 422)

[fol. 70]

II

The construction of the ordinance so as to deny defendant the right to challenge the constitutionality of the ordinance, as enforced, construed and applied because it deprives him of freedom of assembly, speech and worship, is a conflict with the First and Fourteenth Amendments to the United States Constitution, which point is raised in the bill of exceptions.

III

The construction of the ordinance so as to deny defendant the right to challenge the constitutionality of the ordinance, as enforced, construed and applied, violates the substantive rights of the defendant and his procedural rights in criminal cases guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution, which ground was raised in the bill of exceptions.

IV

The interpretation placed upon the ordinance by this Court so as to deny the defendant the right to challenge the

validity of the administrative action in defense to the prosecution based thereon transforms the ordinance and the criminal proceedings of New Hampshire into a bill of attainder, contrary to clause 1 section 10 of Article I of the United States Constitution.

[fol. 71]

Discussion

Point IV was not raised in the bill of exceptions and was not argued in this Court because it was assumed that this Court would distinguish *State v. Stevens*, 78 N. H. 268, from this case because of *Cantwell v. Connecticut*, 310 U. S. 296, on the grounds that here guaranteed civil liberties and constitutional rights are involved which the *Stevens* case, *supra*, was not concerned with. The fact that this Court has, for the first time, distinguished the *Cantwell* case, *supra*, it is respectfully submitted, justifies the consideration of this point for the first time in this case on this motion for rehearing.

In its opinion this Court inadvertently failed to say whether or not the requirement that the defendant pursue the civil remedies of mandamus or certiorari as a condition precedent to making any challenge against the validity of the administrative action constituted a violation of the First and Fourteenth Amendments to the United States Constitution. This point was raised in the bill of exceptions. It was supported by the law called to the attention of the Court on pages 24-28 of the brief for the respondents. The failure of the Court to discuss whether the construction of the ordinance so as to deny the defense constitutes a violation of the First and Fourteenth Amendments is an inadvertency on the part of the Court. This oversight is now called to the attention of the Court so that the issues involved can be discussed.

The distinction of *Cantwell v. Connecticut*, 310 U. S. 296, is not substantial. The statute in the *Cantwell* case was not declared to be void *on its face*. It was held to be valid on its face but unconstitutional as construed and applied by the administrative officer. This is the same contention that has been made in this case, but which has been evaded by the holding in this case.

The holding of this Court, denying the defendant the right to raise his constitutional objection in defense to the prose-

ction is in direct conflict with *Royall v. Virginia*, 116 U. S. 572, 582-584. In that case the licensing tax law was held to be constitutional on its face. As the basis for the denial of the license the administrative official relied on an unconstitutional statute. The same type of holding was made by the Virginia court in that case as was made by this Court in this case. In this case, like the *Royall* case, there is a valid law. In this case, like the *Royall* case, there is an arbitrary and capricious denial based on unconstitutional concepts of the law. In the *Royall* case there was a valid statute unconstitutionally construed and applied. In this case there is a valid ordinance unconstitutionally applied. The defendant in the *Royall* case was denied a constitutional right under a valid statute and penalized by having his constitutional defense taken away from him. In this case the Court has forfeited the federally guaranteed constitutional rights and denied the defendant the right to make his defense based on the federal Constitution in the same way that the Virginia court denied *Royall* his rights. In the *Royall* case the Court said:

"In the present case the plaintiff in error has been prevented from obtaining a license to practice his profession in violation of his rights under the Constitution of the United States. To punish him for practising it without a license thus withheld is equally a denial of his rights under the Constitution of the United States, and the law, under the authority of which this is attempted, must on that account and in his case be regarded as null and void." (116 U. S. at page 583)

The very fact that the Supreme Court of the United States has never held in civil rights cases, where the statute or ordinance was valid on its face but unconstitutional as applied by the administrative officials, that mandamus or certiorari must be resorted to as a condition precedent to judicial review should persuade this Court to reconsider *State v. Stevens*, 78 N. H. 268, and exclude its application [fol. 74] to cases involving rights guaranteed under the federal Constitution. Compare *Schneider v. New Jersey*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296; *Jones v. Opelika*, 319 U. S. 103; *Murdock v. Pennsylvania*, 319

U. S. 105; *Follett v. McCormick*; 321 U. S. 573; *Niemotko v. Maryland*, 340 U. S. 268..

This argument will not be confined to the discussion here. The argument of the defendant is augmented by the Memorandum of Argument Supporting Motion for Rehearing which will be filed in this case on or before May 6, 1952. Reference is here made to that memorandum and it is incorporated herein and made a part hereof as though copied at length herein. The Court is requested to defer final determination of this motion until such memorandum has been considered by the Court.

Wherefore the defendant respectfully prays that the Court, upon consideration of this motion, grant said motion, order a reargument of this case to determine whether or not the application of *State v. Stevens*, 78 N. H. 268, denies the defendant freedom of assembly, freedom of speech and freedom of worship, and his rights to due process of law in criminal proceedings, and whether the construction of the ordinance has transformed it into a bill of attainder, pains [fol. 75] and penalties contrary to Article I section 10. clause 1 of the Constitution of the United States, and sustain the exceptions of the defendant.

Respectfully submitted, Henry M. Fuller, 321 State Street, Portsmouth, New Hampshire; Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York, Attorneys for Defendant.

[fol. 76] IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

DOCKET ENTRIES

In #4113 State v. William Poulos & a.

Rockingham: Entered February 14, 1952.

Plaintiff's brief by March 15, 1952; hearing April Session, 1952.

Defendants' brief filed February 12, 1952.

Plaintiff's brief filed March 28, 1952..

February 20, 1952. Motion by agreement of counsel to advance hearing to April Session granted.

April 26, 1952. Johnston, C. J. State v. Derrickson abated; exceptions of defendant Poulos overruled.

May 2, 1952. Motion for rehearing filed.

May 23, 1952. Motion for stay of execution filed.

June 3, 1952. Motion for rehearing denied; opinion modified. Goodnow, J. did not participate.

June 3, 1952. Execution of judgment stayed for ninety days; forwarding of certificate of the order of this Court to Clerk of Court below likewise stayed for the same period.

Aug. 14, 1952. Appeal to the United States Supreme Court filed. Bond approved.

A true copy:.

Attest: George O. Shovan, Clerk of the New Hampshire Supreme Court.

[fol. 77] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 78] IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

[Title omitted]

PETITION FOR APPEAL STATEMENT, ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL

Petition for Appeal

Considering himself aggrieved by the final decision by the Supreme Court of New Hampshire in the above entitled cause, the above named appellant hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

Statement

This case is one in which the validity of the state legislation is drawn in question, to wit, an ordinance of the City of Portsmouth, New Hampshire, Chapter 24, Article 7, which, among other things, reads as follows:

Section 22. License Required: No theatrical or dramatic representation shall be performed or exhibited and no parade or procession upon any public street or way, and no open air public meeting upon any ground abutting thereon shall be permitted unless a license

therefor shall first be obtained from the City Council. [fol. 79] Section 23. License Form. Every such license shall be in writing and shall specify the day and hour of the permit to perform or exhibit, or of such parade, procession or open air public meeting.

Section 24. Fee. The fee for such license shall be not more than Three Hundred Dollars for each day such licensee shall perform or exhibit or such parade, procession or open air public meeting shall take place, but the fee for a license to exhibit in any hall shall not exceed Fifty Dollars.

Section 25. Penalty. Any person who violates section 22 of this Article shall be fined Twenty Dollars.

Said ordinance was in force and effect at the time of the facts alleged in the petition for appeal appearing above. It is drawn in question upon the ground that it is repugnant, as enforced by the State, to the First and Fourteenth Amendments to the United States Constitution.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. Sec. 1257 (2) and Section 237 (a) of the Judicial Code, the appellant respectfully shows this Court that this case is one in which, under the legislation in force when the Act of January 31, 1928 (45 State. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. Sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Assignments of Error

Now comes the appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by the Supreme Court of New Hampshire in the record and [fol. 80] proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States says that the Supreme Court of New Hampshire erred in the judgment affirming the conviction entered against appellant because—

1. The ordinance, as construed and applied in this case, is invalid because it abridges appellant's rights of freedom of conscience, freedom of speech, freedom of assembly and

freedom of worship, contrary to the First and Fourteenth Amendments to the Constitution of the United States.

2. The law of New Hampshire, authorizing the denial of the defense of unconstitutionality of the ordinance because appellant failed to mandamus the licensing officer is unreasonable, arbitrary, a bill of pains and penalties, discriminatory and a capricious exercise of the police power abridging the constitutional rights of appellant contrary to Article I, Section 10 of the Constitution of the United States, and the First and Fourteenth Amendments to the Constitution of the United States.

3. The ordinance and the law denying a defense, as enforced, misruled and applied, deprive the appellant of freedom to enjoy and exercise his freedoms of assembly, speech, worship, and conscience, contrary to the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Prayer for Reversal

For and on account of the above errors, the above-named appellant prays that the said judgment of the Supreme Court of New Hampshire, hereinabove described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of appellant, and for his costs.

Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York, Counsel for Appellant.

[fol. 81] IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

[Title omitted]

ORDER ALLOWING APPEAL—August 12, 1952

The appellant in the above entitled cause having prayed for the allowance of an appeal from the judgment of the Supreme Court of New Hampshire on April 26, 1952, which became final on June 3, 1952, when the motion for rehearing was overruled; and having presented and filed his petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction, pursuant to the applicable rules and statutes,

It is ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States as provided by law, and

It is further ordered that the Clerk of the Supreme Court of New Hampshire shall prepare and certify a transcript of the record herein containing a true copy of all of the material parts which shall be designated by praecipe filed with him by any of the parties hereto, and transmit the same to the Supreme Court of the United States so that the [fol. 82] transcript shall reach said Court on or before forty days of this date, and

It is further ordered that execution and enforcement of the judgment and decree entered by the Superior Court and the decree entered by the Supreme Court of New Hampshire, affirming the judgment of the Superior Court dated April 26, 1952, rehearing denied June 3, 1952, in this case be, and the same is hereby stayed pending a final disposition of this appeal in the Supreme Court of the United States; and

It is further ordered that the appellant shall execute a good and sufficient security bond in the sum of Five Hundred Dollars (\$500.00), said bond to be subject to the approval of the Clerk of the Supreme Court of New Hampshire.

Frank R. Kenison, Chief Justice of the Supreme Court of New Hampshire.

Dated this 12th day of August, 1952.

[fol. 83] Citation in usual form showing service on Gordon M. Tiffany omitted in printing.

[fol. 84] Cost Bond on Appeal for \$500.00 approved. Omitted in printing.

[fols. 85-86] Notice Calling Appellee's Attention to Rule 12 (omitted in printing).

[fols. 87-88] Acknowledgment of Service (omitted in printing).

[fol. 89] IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF THE RECORD

To the Clerk of the Supreme Court of New Hampshire:

Please incorporate the following documents into the transcript of the record on appeal to the Supreme Court of the United States, which appeal has been heretofore prayed for and allowed from the final judgment of the Court in the above entitled action, to wit:

1. Printed Bill of Exceptions filed in this cause.
2. Corrected opinion of the Supreme Court of New Hampshire in this case and the former opinion in the reserved case, No. 4042 in this Court.
3. Final judgment of affirmance by this Court.
4. Motion for rehearing.
5. Order denying the motion for rehearing.
6. Petition for appeal, statement, assignments of error and prayer for reversal.
- [fol. 90] 7. All of the docket entries of the Supreme Court of New Hampshire made in this cause from the date of filing the case to the date of the preparing of the transcript here requested.
8. Statement as to jurisdiction.
9. Bond for costs, etc., on appeal to the Supreme Court of the United States.
10. Citation.
11. Order allowing appeal to the Supreme Court of the United States.
12. Statement of points to be relied on.
13. Acknowledgment of service by counsel for appellee.
14. This praecipe and proof of service thereof.

Dated at Brooklyn, New York, this — day of August 1952.

Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York, Counsel for Appellant.

[fol. 91] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

[Title omitted]

STATEMENT OF POINTS RELIED ON—Filed September 17, 1952

Comes now the above named appellant in the above entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

1. The ordinance, as construed and applied in this case, is invalid because it abridges appellant's rights of freedom of conscience, freedom of speech, freedom of assembly, and freedom of worship, contrary to the First and Fourteenth Amendments to the Constitution of the United States.

2. The law of New Hampshire, authorizing the denial of the defense of the unconstitutionality of the ordinance because appellant failed to mandamus the licensing officer, is unreasonable, arbitrary, a bill of pains and penalties, discriminatory and a capricious exercise of the police power abridging the constitutional rights of appellant, contrary to Article I, Section 10 of the Constitution of the United States, [fols. 92-94] and the First and Fourteenth Amendments to the Constitution of the United States.

3. The ordinance and the law denying a defense, as enforced, construed and applied, deprive the appellant of freedom to enjoy and exercise his freedoms of assembly, speech, worship, and conscience, contrary to the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

For the above reasons the judgment of the Supreme Court of New Hampshire should be reversed.

Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York, Counsel for Appellant.

[fol. 95] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 341

[Title omitted]

DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—
Filed November 22, 1952:

To the Clerk of the Court:

Now comes the appellant, pursuant to the requirements of paragraph 9 of Rule 13 of the Rules of this Court and designates the parts of the record which he thinks necessary for printing in the consideration of the case:

1. Final judgment of New Hampshire Supreme Court rendered on June 3, 1952.
2. Motion for rehearing.
3. Order denying motion for rehearing.
4. Petition for appeal, statement, assignments of error and prayer for reversal.
5. All docket entries of the New Hampshire Supreme Court.
6. Order allowing appeal.
7. Statement of points to be relied upon.
8. Order of this Court postponing further consideration of jurisdiction, November 10, 1952.
9. This designation of parts of record to be printed.

Dated at Brooklyn, New York, this 21st day of November, 1952.

Hayden C. Covington, Counsel for Appellant.

[fols. 96-98] Proof of Service (omitted in printing).

[fol. 99] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1952

No. 341

[Title omitted]

ORDER POSTPONING JURISDICTION—November 10, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court and of the motion to dismiss or affirm is postponed to the hearing of the case on the merits and the case is transferred to the summary docket.

(5233)